UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE
IRA SANDRON

IN THE MATTER OF:

AMERIPRIDE SERVICES, INC.,

Respondent,

and

WORKERS UNITED a/w SERVICE EMPLOYEES INTERNATIONAL UNION,

Charging Party.

NLRB Case Nos. 15-CA-167488
15-CA-170246

POST-HEARING BRIEF OF RESPONDENT AMERIPRIDE SERVICES, INC.

INTRODUCTION

On January 15, 2016, Respondent/Employer AmeriPride Services, Inc. ("AMP" or "Employer") withdrew recognition from Charging Party/Union Workers United ("Union" or "Workers United") after receiving a petition signed by 27 of 50 bargaining unit employees at its Memphis, Tennessee production facility indicating they no longer wanted the Union to act as their bargaining representative. In response to the employee petition and AMP's subsequent withdrawal of recognition, Workers United filed unfair labor practice charges against AMP, seeking to nullify the employees' decision to remove the Union.

The Charges allege that AMP unlawfully withdrew recognition based on a petition "not supported by an uncoerced majority" of bargaining unit employees. More specifically, the Union claims that purported unfair labor practices by the Employer caused employee disaffection with the Union and that the Employer unlawfully coerced employees and solicited signatures in support

of the employee petition to remove the Union. According to the Union, these purported unfair labor practices tainted the Employee Petition – making AMP's withdrawal of recognition unlawful. Moreover, the Union also claims that if AMP unlawfully withdrew recognition, then post-withdrawal changes to terms and conditions of employment unilaterally implemented by AMP were also unlawful.

Region 15 issued a Consolidated Complaint against the Employer on March 30, 2017. AMP timely filed its Answer and Affirmative Defenses on April 13, 2017, denying it committed any unfair labor practices and asserting that it lawfully withdrew recognition from the Union based on objective evidence that the Union had lost its status as majority representative.

All the parties appeared and participated in a hearing on the Consolidated Complaint held before Administrative Law Judge Ira Sandron in Memphis, Tennessee on July 10-15 and August 21-24, 2017. AMP submits this Post-Hearing Brief pursuant to NLRB Rules and Regulations Sections 101.10 and 102.42 and consistent with Judge Sandron's instructions at the Hearing.

AMP respectfully summits that ALJ Sandron should dismiss the Complaint in its entirety. Based on the testimonial and documentary evidence presented at the Hearing, the General Counsel and Union failed to prove a single allegation against the Employer.

STATEMENT OF FACTS

I. BACKGROUND FACTS

A. AMERIPRIDE SERVICES, INC.

AmeriPride Services, Inc. is recognized as one of the largest uniform rental and linen supply companies in North America – providing uniforms, linens, floor mats and dust-control items, and restroom products and services for hospitality, healthcare, and industrial customers

throughout the United States and Canada (Tr. 1245 Morehead).[1] Headquartered in Minnetonka, Minnesota, AMP operates more than 115 production facilities – including thirty-four (34) "Branch Operations" and approximately eighty (80) Service Centers (Tr. 1245 Morehead).

AMP's operations are composed of processing plants (referred to as Branch Operations) and delivery depots (referred to as Service Centers) which essentially function as "delivery hubs" in support of a specific Branch (Tr. 1245 Morehead). At the processing plant uniforms, linens, and other rental items are sorted, laundered, pressed or folded, and then itemized and staged for delivery to specific commercial customer accounts (Tr. 1245-46 Morehead). On a predetermined delivery schedule, AMP's Customer Service Representatives (CSRs) deliver clean items to the customers on their assigned routes and pick up any dirty or soiled items (Tr. 1246 Morehead). CSRs then bring the soiled items back to the Branch for processing, where production employees clean, launder, and prepare the garments and other items for re-delivery to the customer (Tr. 1246 Morehead).

B. THE MEMPHIS BRANCH OPERATION

AMP operates a production facility in Memphis, Tennessee (referred to as the "Memphis Branch") (Tr. 1246-47 Morehead). "Production" encompasses industrial laundry and related services for commercial customers who rent linens, uniforms, floor mats, shop towels, and restroom hand towel products from AmeriPride. (Tr. 1246-47 Morehead). The Branch operation is supported by three (3) "Service Centers" – located in Jackson, Tennessee; Sikeston, Missouri; and Nashville, Tennessee. Mr. Kenny Morehead serves as General Manager of the Memphis Branch and is responsible for the processing at Memphis as well as the customer service and

[1] References to the hearing transcript are cited by the page number followed by the name of the witness who supports the asserted facts. References to General Counsel Exhibits are cited as GC- followed by the exhibit number. References to Respondent Exhibits are cited as R- followed by the exhibit number.

deliveries made from the Branch and its supporting Service Centers (Tr. 1242, 1244 Morehead).

The Memphis Branch is composed of five (5) functional departments (Tr. 1246 Morehead): (1) Production, which includes the processing of items for customer delivery; (2) Service, encompassing customer delivery – dropping off cleaned products and picking up soiled items; (3) Engineering, responsible for vehicle and equipment maintenance within the facility; (4) Sales, involving business development and setting up new customer accounts; and (5) Customer Administration, which includes office administrative and human resources (Tr. 1246-48 Morehead).

Although there is some variation in working hours depending on particular job functions, the Company generally operates two production shifts Monday through Friday: the "First Shift" from 4:00 a.m. to 12:30 p.m., and the "Second Shift" from 12:30 p.m. to 9:00 p.m. (Tr. 1287-89 Morehead). In addition to the regular production schedule, AMP also seeks volunteers on occasion to work extra shifts on Saturdays, depending on production needs.

The production process at the Memphis plant starts at "the back of the house" when CSRs (from the Service Department) return to the facility with soiled merchandise picked up from customer accounts (Tr. 1246, 1249 Morehead; 1592 Forehand). Production employees then unload the delivery trucks at the at the back-dock area, sort the soiled merchandise by item, and place those items into bags (Tr. 1246 Morehead; 1592 Forehand). The bags of soiled merchandise are sorted by category and then loaded onto an overhead conveyor system which takes them to the wash aisle (Tr. 1246 Morehead; 1592 Forehand). At the wash aisle, the soiled items are washed and laundered and then moved to the "front of the house" for final processing (Tr. 1246 Morehead; 1592 Forehand). At the front of the house, the cleaned items are ironed, folded, or placed on hangers (depending on the particular item) (Tr. 1246 Morehead; 1592-93 Forehand). At this point,

the cleaned items are sorted by customer account and then staged for re-delivery to the customer accounts by the CSRs. (Tr. 1246 Morehead).

AMP employs approximately eighty-five (85) employees at the Memphis Branch (Tr. 1249 Morehead). In the Production Department, AMP employs fifty (50) full-time production workers (referred to as "FTEs") and approximately 10-20 "temporary workers" provided through a staffing agency (Tr. 1250-51 Morehead). Until January 2016, Local 550, Southern Region, Workers United ("Union" or "Workers United") represented a bargaining unit composed of the FTE production positions at the Memphis Branch (Tr. 1250-51 Morehead).

AMP withdrew recognition from the Union effective January 16, 2016 based an employee petition signed by a majority of the Memphis bargaining unit stating that the employees no longer wanted union representation. The temporary workers at the Memphis Branch were excluded from the bargaining unit and not represented by any union.

II. OPERATIVE FACTS REGARDING THE PRODUCTION INCENTIVE BETA TEST

A. AMP CONDUCTS A BETA TEST FOR A PRODUCTION INCENTIVE PROGRAM ON NAPKIN IRONER NO. 2

In July 2015, then-Production Manager David Brigance and General Manager Kenny Morehead met to discuss ways to increase throughput in the Memphis plant (Tr. 1251-52 Morehead; 1086). AMP had used various incentive programs in the past that ultimately were not very effective (Tr. 1086 Brigance). Thus, when they met in July 2015, Brigance and Morehead discussed different ways to get the employees more involved with what they were doing and to push production efficiency (Tr. 1086 Brigance).

Pursuant to these discussions, Mr. Brigance proposed implementing a new production incentive program, whereby employees could better track their individual production and then earn

additional hourly pay for each hour they achieved the minimum production standard for their particular job function (Tr. 1252 Morehead; 1087 Brigance). Under this plan, employees would be eligible to earn an additional one dollar ($1.00) for each hour they worked at or above the existing minimum production standard – thereby incentivizing (motivating) employees to increase their individual production efficiency (Tr. 1252 Morehead). With sustained productivity at the minimum standard, an employee could earn an extra eight dollars ($8.00) per day and as much as $40 more per week additional if the employee is able to maintain the minimum efficiency for an entire workweek (Tr. 1252 Morehead).

Because prior incentive programs at the Memphis plant had failed to adequately motivate employees, Mr. Morehead and Mr. Brigance planned to first "beta test" the new incentive formula with a small group of production employees before considering broader implementation (Tr. 1253-54 Morehead; 1087-88 Brigance). In that regard, they chose to administer the beta test on the plant's napkin ironer machines because of the large volume of napkins that ran through production each day (Tr. 1253 Morehead; 1088 Brigance). As noted by Mr. Brigance, "If we can increase throughput [on the napkin ironer] it would have a direct effect on how the plant ran." (Tr. 1088 Brigance).

AMP runs two napkin ironer machines in the Memphis plant – designated Napkin Ironer No. 1 and Napkin Ironer No. 2 (Tr. 1089 Brigance; R-16). A total of eleven (11) production employees worked on the napkin ironers (Tr. 1088 Brigance). There are five (5) "feeders" stationed at each ironer who feed cleaned napkins into the machines and one (1) "catcher" who collects the ironed napkins from both machines and then folds and stacks the processed napkins (Tr. 1089, 1094-96 Brigance; R-15). At the time AMP planned to run the beta test, six (6) of the "feeders" were regular full time AMP production employees and four (4) were "temporary" workers

employed through a staffing agency (Tr. 1090 Brigance).

Since 2013, the individual standard on the napkins ironers had been 1100 napkins per hour per feeder (Tr. 1091-92 Brigance; R-14). There is a counter mounted on each ironer that monitors the number of napkins each "feeder" puts through the machine in order to track their individual production against the standard (Tr. 1094-95, 97 Brigance; R-15).

AMP had installed an interface with counter on Napkin Ironer No. 2 (Tr. 1108 Brigance). The interface used three colored lights – green, yellow, and red to correspond to individual production efficiency (Tr. 1108 Brigance). A green light told the employee he or she was feeding at 1100 or more napkins per hour (at least 100% efficiency); a yellow light signified the employee was feeding between 70% and 100% efficiency; a red light indicated the employee was feeding below 70% efficiency (Tr. 1108 Brigance).

Under the proposed incentive program proposed by Mr. Brigance, each "feeder" operating the napkin ironers could earn an additional $1.00 for each hour he or she met or exceeded the minimum efficiency standard of 1100 napkins per hour (Tr. 1102-03 Brigance). Because the new interface system had been installed on Napkin Ironer No. 2 (and not Ironer No. 1), only the five (5) feeders working on Napkin Ironer No. 2 would be eligible for the incentive pay for purposes of the beta test (Tr. 1108, 1110 Brigance). Thus, the five (5) feeders on Napkin Ironer No. 1 would serve as a control group to compare against the feeders on Napkin Ironer No. 2 – allowing AMP to assess whether and to what extent the incentive pay impacted production efficiency (Tr. 1094, 1108-09 Brigance).

After working out the details for testing the incentive plan, on July 20, 2015, Mr. Brigance e-mailed Union Business Agent Sheila Dogan to notify the Union that the Company planned to beta test a potential new production incentive (Tr. 1254-56; 1103-05 Brigance; GC-3).

Specifically, the July 20 e-mail from Mr. Brigance stated:

> We will be testing a premium pay system on the napkin ironer No. 2 (FTE-Ironer). We have installed a counter system [on that machine] that allows us to track the portion of the day the FTE is in the green. The green is when the employee feeds the 1100 per hour efficiency or more.

(GC-3).

After receiving the e-mail from Mr. Brigance, Ms. Dogan immediately consulted the Southern Regional Director for the Union, Harris Raynor about the proposed test and subsequently responded to Mr. Brigance on the morning of Tuesday, July 21, 2015 (Tr. 1106 Brigance, 286-87 Dogan, 46 Raynor; GC-4). Based on the input from Mr. Raynor, Ms. Dogan responded that the Union could agree to the proposed test of the incentive plan provided that (1) the efficiency necessary to qualify for the incentive did not change the minimum production standard for disciplinary purposes; and (2) any incentive pay earned would be included in the employee's "regular rate of pay" for purposes of computing overtime compensation. (Tr. 1106 Brigance; 287-88 Dogan; GC-4).

Later that same week, Mr. Brigance addressed the Union's questions (Tr. 1105-07 Brigance). A few days after receiving the July 21st e-mail, Mr. Brigance met with Ms. Dogan in the employee breakroom during one of the Union's regular plant visits (Tr. 1106-07 Brigance).[2] In response to the concerns raised in the July 21st e-mail, Mr. Brigance assured Ms. Dogan that under the proposed plan, achieving the minimum 1100 napkins per hour related only to qualifying for the incentive and in no way changed or reset the standard with regard production-related discipline (Tr. 1107 Brigance). Mr. Brigance further indicated that any incentive pay earned under

[2] AMP management would often meet with Ms. Dogan in the employee breakroom during her plant visits. Typically, the parties did not set an agenda or take notes during these ad hoc meetings (Tr. 1183-84 Brigance).

the proposed plan would be included as part of that employee's "regular hourly rate" for purposes of computing overtime compensation for that particular work week. Finally, Mr. Brigance brought Ms. Dogan out to Napkin Ironer No. 2 and showed her how the new interface between the lights and the unit counter would help the feeders increase their productivity and efficiency on the napkin ironer (Tr. 1107 Brigance).

After answering the Union's questions and showing Ms. Dogan the new interface, Mr. Brigance believed the Union understood the potential incentive program and did not oppose conducting the beta test (Tr. 1107 Brigance). As testified by Mr. Brigance:

> Q: [By Mr. Peters] And what was discussed in this meeting [during the week of July 20]?
>
> A: [By Mr. Brigance] A couple of other issues that she had stopped by to visit [about], and then while we were there we discussed the e-mail and the concerns that she had. We took her out to the [napkin ironer] machine and showed her the machine and showed her how the new interface worked and just kind of tried to answer all of the questions she had.
>
> Q: And what was her response to you after you took her out to the machine and answered her questions?
>
> A: She said she got it, she understood what we were doing and she was on board with it.

(Tr. 1107 Brigance).

Based on that understanding, AMP conducted the beta test of the production incentive program on Napkin Ironer No. 2 for approximately three (3) weeks – from the end of July through early August 2015 (Tr. 1109-10, 1141-42 Brigance). Mr. Brigance and then-Production Supervisor Brian Forehand met with the "feeders" on Napkin Ironer No. 2 to explain the beta test (Tr. 1110-11 Brigance). Mr. Brigance explained that the Company would be testing a new incentive program for the next several weeks and that during the test they could each earn an extra one dollar ($1.00) per hour for each hour they maintained 100 percent efficiency (Tr. 1111 Brigance).

At that point, Mr. Brigance initiated the beta test. Mr. Brigance initially applied the incentive pay calculation retroactively to Monday, July 20, 2015 and continued the beta test for two more weeks (for a total of three weeks) (Tr. 1109, 1141-42 Brigance). During the three-week beta test, only one employee of the five feeders eligible for the incentive actually achieved the 100% efficiency necessary to qualify for the extra $1.00 per hour (Tr. 1110 Brigance). In that regard, production employee Diane Peterson met or exceeded the minimum production standard of 1100 napkins per hour for 62 hours during the relevant three-week period (Tr. 1113 Brigance; R-17).[3] Moreover, when combining the production of five full time employees feeding the Napkin Ironer for the three-week beta test – the feeders met the minimum standard necessary to qualify for the incentive for only 62 of approximately 600 total production hours. Thus, similar to the past incentive programs at the Memphis Branch, the production incentive tested in July-August 2015 failed to increase productivity.

AMP ended the test on Napkin Ironer No. 2 on August 7, 2015 (Tr. 1122-23 Brigance; R-17). Based on the results of the beta test, AMP concluded the incentive did not effectively increase production efficiency and therefore decided to abandon entirely the production incentive program (Tr. 1117 Brigance, 1258-59 Morehead). After concluding the beta test, Mr. Brigance met again with the five (5) napkin feeders on Napkin Ironer No. 2 in the employee breakroom on or about August 10, 2015. At this meeting, Brigance told the employees the beta test was over and that AMP had decided against implementing any production incentive because the program failed to improve production efficiency (Tr. 1123, 1134-35 Brigance). As testified by Mr. Brigance:

Q: [By Mr. Peters] Did you tell them why you weren't moving forward with [the

[3] Notably, Mr. Brigance testified the incentive did not necessarily improve Ms. Peterson's efficiency because even prior to the beta test she typically met or exceeded the minimum production standard without any incentive (Tr. 1117 Brigance).

production incentive program]?

A: [By Mr. Brigance] Yes, sir.

Q: And what did you tell them?

A: We told them throughput did not pick up. You know, it was their opportunity to take the ball and run with it, and they didn't. So, there's no sense moving forward with [the incentive plan].

(Tr. 1124 Brigance).[4]

B. RESPONDENT DISCONTINUES THE BETA AND SUSPENDS CONSIDERATION OF A PRODUCTION INCENTIVE

On about August 12, 2015, Mr. Brigance met again with Ms. Dogan and Mr. Streater regarding the results of the beta test. (Tr. 1120 Brigance;). Mr. Brigance told them that he had discontinued the beta test (Tr. 1120-21 Brigance). He also told them only one employee had qualified for the incentive for about 50% of the hours she worked during the test and that the production data collected during the beta test revealed that the visual stimulus and premium pay did not work and that the incentive program failed to achieve the desired increase in production (Tr. 1120 Brigance). As a result, they discontinued the test.

Toward the end of August 2015, Mr. Brigance and incoming Production Manager Brian Forehand met with Ms. Dogan and Mr. Streater again to discuss the production incentive (Tr.

[4] Shortly after this meeting, employee Diane Peterson approached Mr. Brigance separately to inquire about the production incentive (Tr. 1124 Brigance). Ms. Peterson was apparently upset that AMP had scrapped the incentive program because she was the one employee who had qualified for the incentive pay. Mr. Brigance explained to her that in order for the Company to maintain an incentive program all the employees needed to work toward increasing efficiency; in this instance, however, the increased throughput "just wasn't there." (Tr. 1124 Brigance).

1117-18; 1151-52 Brigance; 1601 Forehand).[5] During this meeting, Mr. Brigance informed them that, because the production incentive essentially failed to increase productivity, AMP had decided not to move forward with the incentive program (Tr. 1605 Brigance).

Mr. Brigance also pointed out that paying the production incentive as part of the employees' hourly rate was problematic with regard to the temporary employees who worked in production (Tr. 1119 Brigance; 1603 Forehand). AMP did not pay the temporary workers directly. Rather, the Company paid a flat fee to the staffing agency for each hour worked by the temporary worker. Under that arrangement, AMP could not simply pay an extra $1.00 per hour to a temporary worker who qualified for the incentive (Tr. 1119 Brigance; 1603 Forehand).

At that point, Ms. Dogan essentially indicated she was not concerned about issues related to paying incentive to temporary employees – she was only concerned about the employees represented by the Union and wanted them to receive the incentive (Tr. 1120, 1151-52 Brigance; 1604 Forehand). Mr. Brigance responded that AMP had to resolve the issue regarding payment of temporary employees prior to implementing any type of production incentive because the incentive would need to cover all the production workers – including both the regular AMP employees as well as the temporary workers (Tr. 1119-20 Brigance). Mr. Brigance told Ms. Dogan that, "I just didn't think it was right [not to include the temporary employees]. I thought, if we're going to do a system, we need to do it for everybody. [I]f we do it for one, we do it for all" (Tr. 1120 Brigance).

A few days later, Union President Harvey Streater approached Mr. Brigance in the loading dock area and asked about the production incentive program (Tr. 1125 Brigance). At that time,

[5] Ms. Dogan recalls having a meeting involving Brian Forehand around late August – early September regarding the production incentive. However, Ms. Dogan recalled that Union Steward Norma Morgan was at the meeting (rather than Harvey Streater) and that Mr. Brigance was by himself (Tr. 305 Dogan).

Mr. Brigance reiterated that if AMP was going to implement some type of production incentive program, it would have to include both the regular and temporary (Tr. 1125-26 Brigance).

III. OPERATIVE FACTS REGARDING THE STANDARDIZED VACATION BENEFIT AND STD COVERAGE FOR THE MEMPHIS BARGAINING UNIT

A. RESPONDENT PLANS TO STANDARDIZE PTO BENEFITS FOR ALL NON-UNION EMPLOYEES AT ITS U.S. FACILITIES

In August 2015, AMP announced plans to standardize the paid time off (PTO) benefits offered to all non-union employees at AMP facilities across the United States, effective January 1, 2016 (Tr. 1264-66 Morehead; R-19).[6] With regard to vacation, the standardized PTO benefits included the following vacation schedule for AMP non-union production employees:

PRODUCTION AND STOCKROOM EMPLOYEES	
YEARS OF SERVICE	VACATION DAYS EARNED
0-2 YEARS	5
3-9 YEARS	10
10-14 YEARS	15
15+ YEARS	20

- Accrues each pay period
- Employees can use vacation as soon as it's accrued
- Employees can carry up to 2X their annual accrual
- Unused time is paid out at termination

(R-20, p. 9/12).

Although the standardized policy improved the overall vacation benefits offered to AMP employees, some employees with 0-2 years of service would earn slightly less vacation time under the standardized accrual formula – depending on the terms of the particular vacation policy (Tr. 1268 Morehead).[7] To ensure that no employee suffered a loss in benefits because of the

[6] The Company-wide standardization involved a wide-range of PTO benefits, including holidays, sick days, attendance policies, short-term disability benefits, bereavement leave, jury duty, and vacation time (R-20 p. 4).

[7] Prior to the standardization, multiple vacation policies and practices existed across the various AMP facilities (Tr. 1275 Morehead). With multiple policies, different locations applied different accrual rates for earning vacation (Tr. 1275 Morehead). Multiple policies also resulted in varied service criteria used to qualify employees for different levels of vacation time. Consequently, when AMP standardized the

standardization, the new policy stipulated that any employee "negatively impacted" by the new accrual formula who was still employed with AMP on the payout date would receive a "one-time, lump sum" payment on their December 11th payroll check equivalent to the annual difference of the accrual (rounded up to the nearest $100) (Tr. 1268 Morehead; R-20 p. 10/12).[8]

B. RESPONDENT EXTENDS THE STANDARDIZED VACATION BENEFIT TO THE UNIONIZED PRODUCTION EMPLOYEES IN MEMPHIS

1. "ME TOO" PROVISION IN THE MEMPHIS CBA ENTITLES BARGAINING UNIT EMPLOYEES TO RECEIVE STANDARDIZED VACATION BENEFIT

In early September 2015, Mr. Morehead met with Mr. Lauderdale to discuss implementation of the standardized PTO benefits for the non-union employees at the Memphis Branch (Tr. 1269 Morehead; 1781-82 Lauderdale).[9] During this meeting, Mr. Morehead recalled language in the Memphis Collective Bargaining Agreement that might entitle the bargaining unit employees to also receive the standardized benefits (Tr. 1269 Morehead; 1790-91 Lauderdale).

After reviewing the CBA, they determined the vacation language under Article XII included a "me too" provision requiring that any improved vacation benefit offered to the non-union employees in Memphis must also be extended to the union-represented employees at that location (Tr. 1269 Morehead). In relevant part, Article XII stated:

---

vacation benefit, certain employees at various locations with 0-2 years of service earned less vacation for that period under the new accrual formula (Tr. 1268 Morehead).

[8] As part of the roll-out of the new PTO program, AMP's Director of Compensation and Benefits, Cheryl Heimer, conducted a series of mandatory webinars for AMP management to explain the standardized benefits and layout the Company's implementation plan. In that regard, Mr. Morehead participated in one of the webinars for GMs in late August 2015 (Tr. 1264; R-19); Mr. Lauderdale participated in the same substantive webinar for local HR Representatives on September 14, 2015 (Tr. 1785-86 Lauderdale).

[9] As noted above, the rollout in 2016 involved the standardization of PTO benefits offered to AMP's non-union employees; the PTO benefits of AMP's unionized employees, on the other hand, were governed by respective collective bargaining agreements.

> If the Company improves vacation benefits during the term of the Agreement for other employees at the Memphis operation, *such improvements shall also apply to bargaining unit employees*.

(Tr. 1269 Morehead; GC-2).

At that point, Mr. Morehead and Mr. Lauderdale compared the standardized vacation policy (Tr. 1797 Lauderdale; R-41) to the vacation benefit provided under Article XII, Section 1 of the CBA (Tr. 1797 Lauderdale; R-41). Comparing the eligibility requirements and the accrual schedules under both policies they determined that, with the exception of the vacation accrual in year one of the schedule, the standardized benefit was better than the vacation benefit under the CBA (Tr. 1799 Lauderdale). With regard to employees adversely affected in year 1, the standardized vacation benefit provided for a lump-sum payment to off-set any loss in vacation (Tr. 1799 Lauderdale). Thus, employees either benefited under the standardized vacation policy or they would be made whole (Tr. 1800 Lauderdale).

Based on that comparison, they concluded the standardized benefit constituted an improvement to the vacation policy in the CBA – and that the "me too" provision likely required AMP to provide the benefit to the bargaining unit (Tr. 1269 Morehead; 1800 Lauderdale). At that point, they contacted then-Corporate Director of Human Resources and Labor Relations Theresa Schulz for direction (Tr. 1269-70; 1800-01 Lauderdale). After reviewing the relevant contract language, Ms. Schulz concurred that, on its face, the "me too" provision in Article XII (which states that improvements ***shall*** apply to bargaining unit employees) obligated AMP to provide the standardized vacation benefit to the unionized production employees at the Memphis Branch (Tr. 1269-70 Morehead; 1801-02 Lauderdale).

As a result, AMP's Corporate Benefits Department prepared a memorandum intended solely for distribution to the unionized production employees in Memphis that provided the details

of the standardized vacation schedule as well as the new STD plan (Tr. 1802-03 Lauderdale; R-24)[10] In that regard, the Memorandum from Cheryl Heimer to "Memphis Production Employees Covered by CBA" stated:

> ... AmeriPride has taken the opportunity to review and evaluate our paid time off benefits and standardize our programs, effective January 1, 2016. The changes that will impact you are the vacation plan and the Short Term Disability plan.[11]

(R-24). The production employee memo also contained the following chart setting forth the new vacation accrual schedule:

PRODUCTION AND STOCKROOM EMPLOYEES	
Years of Service	**Vacation Days Earned**
0-2 YEARS	5 Days (0.77 hours per pay period)
3-9 YEARS	10 Days (1.54 hours per pay period)
10-14 YEARS	15 Days (2.31 hours per pay period)
15+ YEARS	20 Days (3.08 hours per pay period)

(R-24). In addition, the Memorandum also provided details of the new STD coverage that AMP was providing to all employees.[12]

AMP also conducted an "individual impact analysis" of the bargaining unit employees in Memphis to identify any adversely impacted production employees at that location (Tr. 1273-75 Morehead; 1803-04 Lauderdale). Based on that analysis, the Company ultimately determined the new accrual schedule would negatively impact twelve (12) members of the Memphis bargaining

---

[10] Because of the me-too provision specific to the Memphis CBA, the production employees at the Memphis Branch were the only union-represented employees at AmeriPride who received the new vacation benefit.

[11] When AMP rolled out the new PTO benefits, the Company also extended company-wide STD coverage to all employees at every AMP location (Tr. 1289 Morehead).

[12] In that regard, the Memorandum also included a paragraph announcing that all employees would be automatically enrolled in a company-paid STD plan effective January 1, 2016. The STD coverage would provide 60% of the employee's base salary if they become sick or disabled more than 15 calendar days for up to eleven (11) weeks, depending on the disability (Tr. 1289; R-24).

unit: Jerrica Cooper, Jessica Douglas, Tonya Dockins, Diane Hunt, Chau Hoang, Sonja Jackson, Michael Pollion, Andre Randolph, Mary Stewart, YaRaen Talley, Alexis Vasser, and Alice White (Tr. 1273, 75, and 79-81 Morehead; R-21).

Under the standardized vacation benefit, AMP determined the payout to each adversely impacted employee based on the calculated difference in their annual accrual – i.e., the payout was equal to the lost vacation time for each individual (Tr. 1875 Lauderdale: R-20). Under the vacation benefit implemented in Memphis, however, AMP provided the adversely impacted production employees a higher payout (Tr. 1804, 1875 Lauderdale). In that regard, each adversely affected production employee in Memphis who was still employed on the payout date would receive a one-time lump-sum payment of $400.00 (approximately the equivalent pay for one (1) full workweek) even though the actual difference in their individual accrual was substantially less than a full week of vacation (Tr. 1277-78 Morehead; 1804-05, 1875 Lauderdale). In each instance, the $400 payment more than offset any lost vacation the employees experienced resulting from the new accrual schedule (Tr. 1277-78 Morehead; 1805 Lauderdale).[13]

Based on individual impact analysis, AMP prepared a separate Memorandum for each of the seven remaining adversely impacted employees who were designated to receive the lump-sum payout (Tr. 1808 Lauderdale). The individual Memorandum detailed the standardized vacation benefit and described the lump-sum payment they would each receive to offset the adverse impact of the new accrual schedule. In that regard, the individual Memorandum stated, "In accordance with your union contract, we are modifying the Memphis production unit vacation benefit to match

[13] With regard to employees Jessica Douglas, Mary Stewart, YaRaen Talley, and Alice White, because their respective service dates put them so close to the cutoff for the next level of accrual (each less than one-week), AMP advanced them into the higher accrual bracket in order to preclude any adverse impact on either employee rather than pay them the lump-sum payment (Tr. 1281-82 Morehead; R-23, p.3).

the new and improved company vacation plan." (R-24, p. 4). In addition, after setting out the new accrual schedule, the individual Memos further stated:

> This is overall an improved vacation benefit for the Memphis production employees. Unfortunately, a small percentage of our employees will accrue vacation at a lower rate and as a result of our standardization efforts you will be impacted with a lower accrual rate starting January 1st [2016]. You will only be impacted for a period of seven (7) months before you bump into the next accrual level. To help offset any inconvenience this may cause, we will be providing you with a one-time, lump sum payment. The value of your payment will be $400.00. [...] You will receive this payment on your December 11th payroll check and you must be employed with the company at the time of the payout to remain eligible for this payment.

(R-24, p. 4).

2. RESPONDENT ANNOUNCES NEW VACATION BENEFIT FOR MEMPHIS PLANT

On September 29, 2015, the Memphis management team met with the production employees to announce the new vacation benefits (Tr. 1286-91 Morehead; 1805-06 Lauderdale; 1559-60 Streater). Kenny Morehead led the meeting with the first shift production workers and Ricky Lauderdale led the presentation to the second shift employees (Tr. 1287 Morehead; 1806 Lauderdale). All four Union Officers from the bargaining unit were present at the first shift employee meeting – including then-Union President Harvey Streater, Vice President Patricia Porter, Secretary Ethel Jones, and Treasurer Norma Morgan (Tr. 1560-61 Streater, 1810 Lauderdale).

At the outset of each employee meeting, AMP handed out the Memorandum from Cheryl Heimer to "Memphis Production Employees Covered by the CBA." (Tr. 1290 Morehead; 1806 Lauderdale; 1562-63 Streater; R-24). As noted above, this Memorandum detailed both the improved vacation benefits as well as the new STD coverage and stated the new benefits go into effect on January 1, 2016 (Tr. 1290 Morehead; 1807 Lauderdale; R-24).

After handing out the Memorandum, Mr. Morehead and Mr. Lauderdale each explained the new accrual schedule and other features of the standardized vacation policy (Tr. 1289 Morehead; 1807 Lauderdale). They also informed the employees about the new STD coverage that AMP was extending to all employees (Tr. 1289 Morehead; 1807 Lauderdale). Although they did not provide any names or specific details during the all-hands meetings, Morehead and Lauderdale both noted that some individual employees might be adversely affected under the new accrual schedule, but assured the employees that management would meet with those employees individually (Tr. 1291 Morehead; 1563, 1567 Streater).[14]

After his shift on September 29, 2015, then-Union President Streater contacted Ms. Dogan (by telephone) and briefed her on the meeting and the changes that were announced regarding the vacation benefits. During this call, Mr. Streater specifically informed Dogan that AMP planned to meet separately with anyone adversely affected under the new accrual schedule (Tr. 1563 Streater).[15]

Immediately after the all-employee meeting on September 29, 2015, Mr. Morehead and Mr. Lauderdale met individually with each adversely affected employee (Tr. 1291-92 Morehead; 1808-09 Lauderdale). During these separate meetings, AMP distributed the individual letters Ms. Heimer had prepared for each employee and expressly indicated they would each receive a one-time, lump-sum payment of $400.00 to off-set the negative impact of the new policy on their vacation accrual on their December 11th payroll check (Tr. 1809 Lauderdale; GC-47).

---

[14] Notably, during the meeting both Mr. Streater and Ms. Porter openly voiced their approval of the vacation benefits (Tr. 1564 Streater; 1819-20 Lauderdale).

[15] Mr. Streater confirmed that during the meeting Mr. Lauderdale indicated that the Company would meet separately with employees who would be adversely affected under the new vacation policy, but that Mr. Lauderdale did not provide any specific details of how that would be handled (Tr. 1563, 1567-68 Streater).

On the same day the Company informed the union officers about the new vacation accrual during the all-hands meetings, AMP also notified Union Business Agent Sheila Dogan about the upcoming benefit improvements (Tr. 1292-93; 1810 Lauderdale). In that regard, Mr. Lauderdale sent an e-mail to Ms. Dogan on the morning of September 29, 2015 that stated "Here is a copy of the letter we gave to all FTEs today. AmeriPride has made some improvements to all FTE employees regarding our vacation and STD benefits." (Tr. 1293-94 Morehead; 1810 Lauderdale; 322 Dogan; GC-7 p. 2). The e-mail also noted the improvements would take effect January 1, 2016 (GC-7 p. 2).

After once again conferring with Mr. Raynor, Ms. Dogan responded (Tr. 65 Raynor; 324 Dogan; GC-7). On the afternoon of September 29, 2015 Ms. Dogan sent an e-mail to Mr. Lauderdale stating:

> We have received your communication of September 29, 2015 regarding changes in benefits and vacations affecting employees represented by our Union in Memphis. Our contract permits changes in health care, which includes disability, which are uniformly applied in Plan. Therefore, we are pleased to see the improvement of adding STD.
>
> On vacation, our Contract provides any improvements in vacation benefits granted to non-bargaining unit employees in Memphis will also be extended to bargaining unit employees in Memphis. Clearly moving the qualifications for a third week down to after 9 years and the fourth week to 15 years are improvements which we welcome. Our contract also had a requirement that an employee complete a year of service and work 1500 hours during the previous twelve months to be entitled to vacation. It appears that the new accrual system would mean deleting the 1500-hour requirement and allowing employees to begin accruing vacation time immediately. Is our interpretation correct?
>
> Finally, can you confirm that under the new accrual system, if an employee is out on leave during a payroll period, they still accrue time towards days earned and that the time accrued during a payroll period does not depend on the actual number of hours worked.

(Tr. 1811 Lauderdale; GC-8). [16]

[16] According to Mr. Raynor, the Union posed these questions about the new vacation benefit because, "At

On September 30, 2015, Mr. Lauderdale answered the Union's questions (Tr. 1811 Lauderdale). In an e-mail to Ms. Dogan, Mr. Lauderdale confirmed that employees start accruing time off immediately under the new vacation policy and verifying that employees on leave continue to accrue during those payroll periods. (GC-8).[17]

Over the next few weeks, Mr. Lauderdale and Ms. Dogan also engaged in brief general discussions about the new vacation benefit during various phone conversations (Tr. 1816 Lauderdale). Then, in late October 2015, Ms. Dogan requested copies of the individual letters provided to the seven adversely impacted bargaining unit employees (Tr. 1815 Lauderdale).

On November 4, 2015, Mr. Lauderdale and Mr. Forehand met with Ms. Dogan and Mr. Streater to provide the individual letters as she requested (Tr. 1570 Streater; 1712 Forehand; 1815, 1879 Lauderdale; R-42). During this meeting, Mr. Lauderdale explained the calculations used in the new accrual schedule as well as the Company's plan with regard to the adverse impact on employees who had less than 2 years of service (Tr. 1570-71 Streater; 1713-14 Forehand; 1816-17, 1880-81 Lauderdale; R-42).

With regard to the adversely impacted employees, Mr. Lauderdale explained how employees with less than two (2) years of service would be adversely impacted under the new accrual schedule – losing up to a week of vacation. He further indicated that, to offset any actual loss in vacation time experienced under the new system, AMP planned to provide each adversely

---

that time, it was clear to me that there were certain provisions of the vacation policy by which [the employees would benefit, namely the reduction of the number of years to qualify for a certain number of weeks, additional week that they would qualify for. There were other issues of which I was not certain it would be beneficial or harmful, and those were the reasons that I was asking some of these questions." (Tr. 72-73 Raynor).

[17] Based on the various communications between Ms. Dogan and Mr. Lauderdale in September 2015, AMP concluded the Union agreed that the standardized vacation accrual constituted an improvement to the vacation benefit (Tr. 1295-96 Morehead).

impacted employee a one-time lump sum payout of $400 (R-42). Mr. Lauderdale then gave Ms. Dogan a copy of the letter that was handed to each of the seven (7) adversely affected employees when he and Mr. Morehead met with them on September 29, 2015 (Tr. 1572-73 Streater; 1714-15 Forehand; 1817 Lauderdale; R-47).

When Mr. Lauderdale finished his explanation, Ms. Dogan then asked Mr. Streater "how do the employees in the plant feel about this?" (Tr. 1714 Forehand). Mr. Streater responded, "everybody's on board." (Tr. 1671 Streater; 1714 Forehand; 1817-18 Lauderdale). [18]

3. THE UNION OBJECTS TO IMPLEMENTATION OF THE STANDARDIZED VACATION FOR BARGAINING UNIT EMPLOYEES IN MEMPHIS

In mid-November 2015, AMP first learned the Union had issues with the standardized vacation benefit (Tr. 1299 Morehead; 1820 Lauderdale). In that regard, in a November 13, 2015 letter to Kenny Morehead, Union President Raynor claimed the Union never agreed to the vacation changes. In pertinent part, the November 13th letter stated:

> I am aware of a communication sent by Ricky Lauderdale to Sheila Dogan on September 29 and subsequent communications regarding some benefits (vacation, STD, etc.). I want to be crystal clear that the Union has informed the Company, at a meeting with Sheila and now by this letter, that it does not agree with the portion of these changes, which was already announced in a posting by Cheryl Heimer dated September 14, 2015 which reduce the negotiated vacation benefit for employees with 2 years of service.

(Tr. 1299 Morehead; 1821 Lauderdale: GC-9).

On November 30, 2015, Kenny Morehead responded to the objections raised in Raynor's November 13 letter – indicating that the Collective Bargaining Agreement required that AMP extend improved vacation benefits to the bargaining unit employees (Tr. 1299 Morehead; GC-10).

[18] According to Mr. Lauderdale, at no point during the meeting did Ms. Dogan raise any objection to AMP's extension of the new vacation to the bargaining unit employees (Tr. 1818 Lauderdale).

Mr. Morehead further noted that, based on their earlier discussions, the Company understood the Union had agreed the bargaining unit should receive the benefit changes. Finally, Mr. Morehead expressed willingness to discuss the details of the changes with Mr. Raynor. In the meantime, however, AMP would need to inform the employees they would have to wait for the vacation benefit changes until he heard back from Raynor, because the negatively impacted employees were expecting to receive the lump-sum payment on their December 11th paycheck (Tr. 1299 Morehead; GC-10).[19]

Mr. Raynor responded on December 2, 2015 (Tr. 81, 83 Raynor; GC-11), essentially disagreeing with Mr. Morehead's interpretation of the collective bargaining agreement as well his characterization of events. In the letter, Raynor accused the AMP of withdrawing its offer of STD coverage. With regard to the vacation benefit, Mr. Raynor emphasized that the Union never agreed to any "negative changes which would increase eligibility for the second week [of vacation] from two to three years." (GC-11). Despite objecting to the first step of the standardized accrual structure, Mr. Raynor goes on to insist that AMP implement on January 1, 2016 those portions of the new vacation benefit the Union liked (GC-11 p.3).

After he received the letter, Mr. Morehead called Mr. Raynor to discuss the vacation accrual issue (Tr. 85 Raynor). During this conversation, Mr. Morehead stated that AMP believed the new vacation benefit was improvement from the benefits set out in Article XII. He also

---

[19] In order for AMP to include the $400 lump-sum payment with the employees' December 11th payroll check, Mr. Lauderdale needed to submit the necessary paperwork to the Corporate Payroll Department no later than December 4, 2015 (Tr. 1304 Morehead; 1827-28 Lauderdale). Thus, in order for AMP to meet the announced timetable for issuing the lump-sum payouts, the parties had to resolve the Union's concerns about the standardized vacation benefit by December 4, 2015 (Tr. 1304 Morehead; 1827-28 Lauderdale). If they failed to do so, the "negatively impacted employees" would not receive the lump-sum payment in their December 11th payroll as the Company had promised.

attempted to explain the rationale for the vacation benefit and how it worked.

Mr. Morehead further indicated that he needed to know by Friday, December 4, 2015 whether the Union agreed the vacation benefit was an improvement in order for him to submit check requests to Corporate Payroll for the lump-sum payments to the 7 adversely impacted employees in time to include them with the employees' December 11 payroll (Tr. 88 Raynor; 1302 Morehead). At the close of the discussion, Mr. Raynor asked Mr. Morehead to provide some additional information for him to consider before making a decision (Tr. 86 Raynor; 1302 Morehead).

As a follow-up to their conversation, Mr. Raynor sent an e-mail to Mr. Morehead on December 3, 2015 indicating that he had not received the information he requested (Tr. 88 Raynor; 1302 Morehead; GC-12). Mr. Morehead replied that he would check on the status of the information (GC-12) and then referred the matter to Ricky Lauderdale for follow-up (Tr. 1302-03 Morehead; 1824 Lauderdale).

Mr. Lauderdale forwarded the requested information to Mr. Raynor late afternoon on December 3, 2015 (Tr. 89 Raynor; 1824 Lauderdale; GC-13). In the cover e-mail, Mr. Lauderdale stated:

> Kenny has asked me to provide you with additional information regarding the changes to our benefit plan.... In the attachment, you will find 3 pages:
>
> Page 1 – The letter went to all employees in the Production Department
>
> Page 2 – The letter went to the 7 employees who were impacted and would be paid out a one-time lump sum payment of $400 on 12-11-15
>
> Page 3 – The list provides the names of the 7 employees impacted
>
> I know Kenny explained that employees start accruing the PTO at the time of hire and it accrues per pay period. Employees are paid on a weekly basis, so each week the employee will accrue .77hrs (.77hrs x 52wks = 40hrs of PTO). With this said and the end of the employees first 104 wks with AmeriPride (2yrs) the employee would earn 80hrs (2 weeks) of PTO since the employee will start accruing the .77hrs per week at the time they are hired.

> We have heard positive feedback from the employees. If you and Kenny agree on this, I would be more than happy to explain it to the employees you or Sheila heard from.

GC-13).

After he reviewed the information AMP provided, Mr. Raynor still had questions about the $400 lump sum payment (Tr. 96 Raynor; GC-14). Mr. Lauderdale spoke with Mr. Raynor the following morning and explained the $400.00 payment (Tr. 97 Raynor; 1824-25 Lauderdale). To that end, Mr. Lauderdale explained that, rather than calculate the payment to exactly off-set the value of each employee's lost vacation time under the new accrual, the Memphis management team decided to pay the Memphis employees an across-the-board lump sum payment, approximately equivalent to one week's pay – which was actually more generous than under the standardized policy applied at other AMP locations (Tr. 97-8 Raynor; 1825-26 Lauderdale).

4. THE UNION AGREES THE NEW VACATION BENEFIT CONSTITUTES AN IMPROVEMENT

Based on Mr. Lauderdale's explanation of the $400 payment, Mr. Raynor then "agreed" to the standardized vacation benefit (Tr. 1826 Lauderdale). In that regard, Mr. Lauderdale received a follow up e-mail from Mr. Raynor on December 4, 2015 that stated, "With the explanation you provided today, the union accepts the changes to the vacation policy and the STD policy previously accepted." (Tr. 98 Raynor; 1303 Morehead; 1826 Lauderdale; GC-14).

Because the parties essentially agreed that AMP should implement the new vacation benefit as the Company had previously announced before the Corporate Payroll deadline, Mr. Lauderdale was able to timely submit check requests for the lump sum payments. Consequently, AMP was able to include the $400 lump-sum payments with the adversely impacted employee's December 11th payroll – just as the Company had announced (Tr. 1827-29 Lauderdale; R-43).

Likewise, AMP implemented the standardized vacation benefit to all employees at the

Memphis plant on January 1, 2016 – just as AMP had initially announced to employees September 2015).[20]

I. OPERATIVE FACTS REGARDING THE SHIFT CHANGE OF MELVIN BODDIE AND JAMIE PAYNE IN DECEMBER 2015

In late 2015, AMP experienced a significant decrease in the expected output from the wash aisle (Tr. 1669-70, 1677 Forehand).[21] AMP expects the wash aisle to process between 76,000-80,000 pounds per day (Tr. 1667, 16674-74 Forehand).[22] In the fall of 2015, however, wash aisle productivity continually came in well below the expected target (Tr. 1667 Forehand; R-37).

In looking into the decrease in productivity, Mr. Forehand first met with the two wash aisle operators – Melvin Boddie on the first shift and Jamie Payne on the second shift (Tr. 1677 Forehand).[23] When Mr. Forehand met one-on-one with each employee, however, Mr. Boddie blamed Mr. Payne, and Mr. Payne blamed Mr. Boddie (Tr. 1677 Forehand).

It became apparent to Mr. Forehand that the two wash aisle operators were not working

---

[20] Because AMP answered Mr. Raynor's questions and concerns in sufficient time to avoid any delays in either the lump-sum payout or the actual implementation – there was never any need to inform the employees that there might be a delay. Thus, other than to Mr. Raynor, the possibility that the payment and/implementation might be delayed was never communicated to any employees.

[21] The wash aisle is where soiled linens, garments, shop towels, etc. are washed and dried. The soiled items are carried to the wash aisle on a rail system in 250 pound bags. Wash aisle operators unload the bags and place the soiled items in large industrial washers. Each type of item (shop towels, blankets, napkins, etc.) or type of fabric (linen, cotton, etc.) requires a specific detergent formula and chemical mixture. Wash aisle operators program the washers for the item or formula and load the items in the appropriate machine. Once washed, the wet items are either placed in large industrial dryers or hung to dry (Tr. 1666-67 Forehand).

[22] AMP determines wash aisle productivity based on the total poundage processed each day by the first and second shift, collectively (Tr. 1667 Forehand). In the fall of 2015, AMP expected the wash aisle to process between 76,000-80,000 pounds per day (Tr. 1667 Forehand).

[23] In the fall of 2015, production employees Melvin Boddie and Jamie Payne were the only two workers assigned to the wash aisle (Tr. 1668 Forehand).

together to make the production target.[24] In that regard, Mr. Boddie was focusing on processing "quick turn" items during his morning shift – leaving for Mr. Payne the heavier items that take longer to process (Tr. 1679 Forehand). As a result, the wash aisle process backed up at the end of the day (Tr. 1679 Forehand).

To solve the problem, Mr. Forehand decided to temporarily switch the respective shifts of the wash aisle operators – moving Mr. Boddie from first to second shift and Mr. Payne from second to first – so they could each understand the production process from the other's perspective (Tr. 1680-81 Forehand). In late November 2015, Mr. Forehand met separately with Mr. Boddie and Mr. Payne and informed them about the planned shift change (Tr. 1681 Forehand). Although neither employee was enthusiastic about changing shifts (Tr. 1681), Mr. Forehand told them it would only be for a few weeks (Tr. 1682 Forehand).

AMP implemented the wash aisle shift switch effective December 7, 2015 and continued through the holidays (Tr. 1684-85; R-38). Mr. Boddie continued working nights while Jamie Payne worked the day shift for approximately 6 weeks. Sometime during the week of January 11, 2016, Mr. Forehand spoke with both Mr. Payne and Mr. Boddie and informed them they would be moved back to their "regular" shift beginning the following week. Accordingly, Mr. Boddie returned to days and Mr. Payne returned to the night shift effective Tuesday, January 19, 2016 (Tr. 1685

[24] Because processing time varies depending on the particular type of product (with some items taking more time and effort to process than others), achieving the 76,000-80,000 pounds per day goal requires that the wash aisle operates balance the mix of products throughout the day. (Tr. 1666-67 Forehand). For example, "quick-turn" items like napkins weigh less and air dry before they ironed; thermal blankets on the other hand are heavier and go through the dryers – taking more time to process (Tr. 1678 Forehand). The operators must maintain a balanced mix of heavier and quick dry items across both shifts, otherwise the process backs up at the end of day – either preventing the operators from reaching the production goal or resulting in significant overtime (1679 Forehand).

Forehand; R-38).[25]

IV. OPERATIVE FACTS REGARDING THE PARTIES' NEGOTIATIONS FOR A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT

A. SCHEDULING BARGAINING FOR THE 2016 NEGOTIATIONS

On November 13, 2015, Kenny Morehead received correspondence from Mr. Raynor requesting potential bargaining dates (Tr. 1306 Morehead; GC-9).[26] Under separate cover, Mr. Morehead also received an information request from Mr. Raynor for negotiations (Tr. 1307 Morehead; GC-15).[27]

In the December 2, 2015 letter to Mr. Morehead, Mr. Raynor proposed potential dates for the upcoming contract negotiations (GC-11).[28] In that regard, the letter specifically states:

> Our contract expires January 15, 2016. You requested by phone that I propose dates for negotiations. The Union would be available the weeks of January 4 and 11. I would prefer meeting on the sixth or seventh and saving a date the next week if we need it. We can also be available the week of December 19, if needed.

(GC-11, p.3).

After a series of phone calls back and forth in December 2015, they ultimately agreed to meet on January 6, 2016 to begin negotiations (Tr. 1312, 1314 Morehead).

In an e-mail to Mr. Raynor on December 29, 2015, Mr. Morehead indicated the Company may not be able to finalize any deal "when we meet on January 6, 2016" because the Company's

---

[25] The Memphis production facility was closed on Monday, January 18, 2016 for the Martin Luther King holiday.

[26] The Collective Bargaining Agreement between AMP and the Union in effect and that time in effect expired at midnight on January 15, 2016 (GC-2, Article XXVII).

[27] There is no dispute that AMP timely provided all the information requested by Mr. Raynor and the Union in connection with 2016 contract negotiations (Tr. 101-02 Rayson).

[28] Although Mr. Raynor testified at the hearing that he sent the December 2nd e-mail "having not gotten a response from Kenny on dates." (Tr. 102 Raynor), the content of Mr. Raynor's e-mail stating, "You requested by phone that I provide dates for negotiations" (GC-9) directly contradicts his self-serving testimony.

Director of Labor Relations, Theresa Schulz, would not be available. At that point, the e-mail states, "Would you like to reschedule or do you still want to meet on January 6, 2016?" (GC-16). Mr. Raynor essentially responded that he wanted to keep the January 6th date because he had bought a non-refundable ticket (GC-16).

Further along the e-mail thread, Mr. Raynor also informed Mr. Morehead that he would need a little time with his bargaining committee on the morning of January 6th before they begin negotiations (Tr. 1316 Morehead; GC-16).[29] As stated in Mr. Raynor's e-mail: "I anticipate meeting the committee at 9:30 a.m. Can we start with you guys about 10:30?" (Tr. 1316 Morehead; GC-16).

B. THE JANUARY 6, 2016 BARGAINING SESSION

On the morning of January 6, 2016, Ms. Dogan and Mr. Morehead arranged to meet prior to the beginning of negotiations to conclude a step-three meeting regarding the grievance "shift transfer grievance" filed by the Union on behalf of Melvin Boddie (Tr. 1317 Morehead). Ms. Dogan has suggested they conduct the step three meeting that morning because the she was forced to push this meeting from the previous week after she was involved in an accident and stranded out of town (Tr. 1317 Morehead). She suggested they meet when they were all in the plant for negotiations (Tr. 1317 Morehead).

1. MOREHEAD AND DOGAN MEET TO DISCUSS THE SO-CALLED SHIFT TRANSFER GRIEVANCE

Beginning at approximately 9:30 a.m. that morning, Mr. Morehead met with Ms. Dogan in his office regarding the grievance, while the remaining union committee prepared for negotiations in a second-floor conference room where they held the bargaining sessions (Tr. 1317-18

[29] In 2016, the Union bargaining was composed of Lead Negotiator Harris Raynor, Bernice Brown, Sheila Dogan, Patricia Porter, Lucretia Lewis, and Norma Morgan (Tr. 1851 Lauderdale).

Morehead). Shortly after 10:00 a.m., Bernice Brown (a member of the Union bargaining committee) entered the office and stated that Mr. Raynor was upset because they had not yet started negotiations (Tr. 1318 Morehead). They were nearly finished with the meeting at that point, so they wrapped this up and Ms. Dogan and Ms. Brown went up to the conference room (Tr. 1319 Morehead).

A few minutes later, Mr. Raynor entered Morehead's office and closed the door. He then began yelling and swearing at Mr. Morehead – accusing him of trying to delay bargaining because of the employee petition to remove the Union (Tr. 1319-20, 1331 Morehead). At that point, Mr. Morehead told him that Ms. Dogan had set up the meeting that morning because she was not able to meet the week before (Tr. 1331 Morehead). Mr. Raynor then stated "Sheila should have never done that. . . She didn't have the right to set that meeting. We are in negotiations that day." (Tr. 1331 Morehead). Mr. Morehead replied, "well that's not my fault." (Tr. 1331, 1332).

At that point, they ended their conversation and they both went up to conference room to begin the bargaining session (Tr. 1320, 1332, 1335 Morehead). Once both committees were together in the conference room, they started negotiations (Tr. 1320). By that time, it was approximately 10:45 a.m. (Tr. 1332 Morehead).

2. <u>THE BARGAINING SESSION</u>

Once the bargaining had started, Mr. Morehead presented Company Proposal No. 1 containing AMP's Non-Economic Proposals (Tr. 1335-36 Morehead; R-25).[30] Proposal No. 1 encompassed 37 non-economic items – proposing various additions or deletions from the collective bargaining agreement (T. 1339-40 Morehead; R-25). Mr. Morehead reviewed each item

[30] For 2016 negotiations, AMP's bargaining team included Lead Negotiator Kenny Morehead, Rick Lauderdale, and Brian Forehand (Tr. 1851 Lauderdale). This was the first time that either Mr. Lauderdale or Mr. Forehand had participated in collective bargaining.

on Proposal No. 1 and tried to answer any questions. The Company's bargaining notes from the January 6 session reflect that, as a result of their discussions, the parties made significant progress going through the non-economic proposals—reaching tentative agreement on half of the items (18 of 36 items TAd; item #26 pulled) (Tr. 1340-41, 1345 Morehead; R-26). Based on their discussions, the Company also modified a number of the proposals and withdrew ("pulled") one item from the proposal (Tr. 1341 Morehead; R-26).

AMP also presented its Economic Proposal on January 6, 2016 – even though the parties had not yet reached full agreement on the all the non-economic items contained in Company Proposal No. 1 (R-25), (Tr. 1342-44 Morehead; R-27). As lead negotiator, Mr. Morehead had never before presented the employer's economic proposals until the non-economic issues had been resolved (Tr. 1344-45 Morehead). Mr. Morehead agreed to do so on this occasion to accommodate a request by Mr. Raynor (Tr. 1345 Morehead). AMP's economic proposal contained 17 separate items, including modifying the contract language to incorporate the new vacation benefit implemented on January 1, 2016 (Tr. 1855-56 Lauderdale; R-27). Once again, the Company's bargaining notes reflect that the parties reviewed the entire Economic Proposal submitted by AMP on January 6, 2016 (Tr. 1346 Morehead; R-28).

During the discussions on the economic proposal, Mr. Raynor asked whether Item No. 4 of the proposal contained the same vacation policy that AMP had just implemented on January 1, 2016 (Tr. 1855 Lauderdale). Mr. Lauderdale confirmed Company Economic Proposal No. 1 contained new vacation accrual schedule (Tr. 1855 Lauderdale). Mr. Lauderdale explained that the Company Proposal incorporated the new vacation accrual schedule into the existing language of Article 12, rather than set forth the accrual schedule in the "chart form" as it appeared in the Memorandum to the employees (Tr. 1855 Lauderdale; R-28). Although the "form" of the

Company's the Economic Proposal looked different, the actual vacation accrual schedule in the Company's proposal was the same as the schedule implemented on January 1, 2016 (Tr. 1855; R-28).

On that point, Mr. Lauderdale attempted "demonstrate" that the accrual schedule set forth in the Company's Economic Proposal calculated to provide the same vacation benefit as the new policy (Tr. 1855 Lauderdale). The accrual schedule in the Company's proposal only looked different (like the difference between a story problem and number equation in mathematics) because the proposal was designed to match the existing contract language (Tr. 1855-56 Lauderdale). However, the demonstration seemed to leave the Union committee more confused.

Eventually, Mr. Raynor suggested the vacation benefit in the CBA might be easier to understand if the accrual schedule in Article XII contained the same accrual chart contained in the employee memo (Tr. 1855-57). In response to Mr. Raynor's recommendation, the Company agreed to revise its Economic Proposal to substitute the accrual chart for the "story problem" version (Tr. 1857-558 Lauderdale).

Consistent with the understanding reached during that session, the handwritten notation in the left-hand margin on the front page of the Company's bargaining notes (next to Item No. 4) states, "Revise with chart." (Tr. 1857 Lauderdale R-28 p.1). [31]

In reviewing the Company's Economic Proposal, the parties also noted that Item No. 12

[31] A subsequent e-mail exchange between Mr. Morehead and Mr. Raynor on the afternoon of Monday, January 11, 2016 contains the Employer's revised proposal regarding the vacation benefits under Article XII (GC-26). The e-mail thread reflects several proposals and counter proposals between the parties on language items – put the centerpiece of the proposal is the vacation accrual chart that AMP agreed to incorporate into its Economic Proposal during the January 6 bargaining session. In that regard, the top of the first e-mail in the thread states: As previous discussed during negotiations last week, I will be available to negotiate through e-mail this week since I will be travelling for work. I have attached below the revised vacation proposal; instead of listing the vacation days earned, we used the chart as we discussed (GC-26 p. 3).

regarding the Health and Life Benefits under Article 18 did not include the STD coverage AMP also implemented on January 1, 2016. During the session, Mr. Morehead conceded the omission of STD from the Company's proposal was merely an oversight, and indicated the Company would also add the STD language under Item No. 12. To that point, the handwritten notation in the left-hand margin on page 2 of the Company's bargaining notes (next to Item No. 12) states, "Add STD." (Tr. 1348 Morehead; R-28).

The parties continued bargaining on January 6th until approximately 3:30 p.m. (Tr. 132 Morehead). Although they did not reach a contract agreement that day, the parties were able to reach a number of tentative agreement on several items from both the Company's and Union's proposals (Tr. 1322-23 Morehead). Despite their progress on Day 1, Mr. Raynor was eager to continue bargaining – even though Mr. Morehead and Mr. Lauderdale had reserved only January 6 for bargaining that week.

After a short caucus with Mr. Lauderdale, Mr. Morehead informed Mr. Raynor and the Union committee that the Employer could also meet for a short time the following morning (January 7, 2015) to continue bargaining (Tr. 1323 Morehead). However, prior commitments limited how long Mr. Morehead could meet that day.[32] Accordingly, they committed to meet beginning at 8:00 a.m. with a "hard stop" at 10:30 a.m.

C. THE JANUARY 7, 2016 BARGAINING SESSION

On January 7, 2016, AMP presented Company Proposal No. 2 on non-economic issues (Tr. 1348 Morehead; R-29). Proposal No. 2 reflects certain tentative agreement reached the day before

[32] Mr. Morehead was scheduled to meet with the Jackson, Tennessee sales team early Friday morning on January 8, 2016 (Tr. 1323 Morehead). The following week, he was traveling to Sand Diego for a quarterly General Managers Meeting (Tr. 1323-24 Morehead).

as well as various re-proposals and counterproposals, as the parties continued their negotiations (Tr. 1348-49 Morehead; R-29). In that regard, the Company bargaining notes from the January 7, 2016 session reflect the continued progress made by the parties (Tr. 1349-51 Morehead; R-30).

D. THE PARTIES CONTINUE BARGAINING VIA E-MAIL

After two face-to-face bargaining sessions on January 6 and 7, 2016, Mr. Morehead and Mr. Raynor continued to negotiate for the successor contract via e-mail exchanges and phone calls (Tr. 1367-1369 Morehead). For example, in addition to the January 11, 2016 e-mail thread encompassing the back-and-forth negotiations regarding language in Article XII (Tr. 1367 Morehead; GC 26), the middle paragraph of an e-mail from Mr. Morehead to Mr. Raynor dated January 13, 2016 reflects additional bargaining regarding paid holidays and workers compensation issues under the contract (GC-27). The top paragraph of this e-mail expressly states, "As you know, I'm very busy with out of town meetings this week, so I'm trying my best to get back to you as quickly as possible. We offered up the dates of next Tuesday (19th) and Wednesday (20th), so yes, they are days that work for us and you can consider the dates confirmed." (GC-27). In addition, during the afternoon of January 15, 2016, Mr. Raynor sent Mr. Morehead and Mr. Lauderdale an e-mail providing a recap of where the parties stood on non-economic items (GC-28).

V. OPERATIVE FACTS REGARDING AMERIPRIDE'S WITHDRAWAL OF RECOGNITION FROM THE UNION

AmeriPride withdrew recognition from the Union effective January 16, 2016 based on objective evidence the Union lost majority support of the bargaining unit.

A. PRODUCTION EMPLOYEE JAMISON PAYNE INITIATES A PETITION TO REMOVE THE UNION AS BARGAINING REPRESENTATIVE

In November 2015, production employee Jamison ("Jamie") Payne initiated a petition to remove the Union as bargaining representative of the production employees at the Memphis plant

(Tr. 788 Payne). In that regard, Mr. Payne googled "how to get rid of a union" from his cellphone and home computer and then reviewed the list of websites from the search result (Tr. 795 Payne). One of the sites near the top of the list provided step-by-step instructions and a diagram showing to remove a union (Tr. 795 Payne). [33]

Using the information that he found on from the website, Mr. Payne created a petition for employees to sign to remove a union from the workplace (Tr. 796 Payne; R-11). A header centered across the top of the first page of the document in bold capital letter states: "**PETITION FOR DECERTIFICATION (RD) – REMOVAL OF REPRESENTATIVE**." (R-11).

Directly below the header is a prefatory paragraph that essentially explains what it means for an employee to sign the petition. This introductory paragraph advises that, by signing the petition, the signatory is requesting either a decertification election regarding continued representation or employer withdrawal of recognition from the union, depending on the number of signatures are obtained on the petition. Specifically, the Petition stated:

> The undersigned employees of **AmeriPride** (employer name) do not want to be represented by **Constitution of the Southern Region of Workers United** (union name).
>
> Should the undersigned employees make up 30% or more (and less than 50%) of the bargaining unit represented by **SEIU (**union name), the undersigned employees hereby petition the National Labor Relations Board to hold a decertification election to determine whether a majority of employees no longer wish to be represented by this Union.
>
> Should the undersigned employees make up 50% or more of the bargaining unit represented by **SEIU (**union name), the undersigned employees hereby request that **AmeriPride** (employer name) withdraw recognition from this union, as it does not enjoy the support of a majority of employees in the bargaining unit.

[33] It is undisputed that Mr. Payne did not have any conversations with management about trying to remove the Union, prior to initiating the Petition (Tr. 792 Payne). It is further undisputed that management did not encourage Mr. Payne to initiate the Petition or otherwise promise anything in return for Mr. Payne's effort to the remove the Union as bargaining representative (Tr. 793 Payne).

(R-11). Then, below the introductory paragraph are a series lines for employee signatures:

_____	_____	_____
Signature	Name (Print)	Date

(R-11).

Based on the information he read on the website, he understood that he could only talk to employees about signing the Petition on "non-work time" – which he understood to mean when neither he or the other person were supposed to be working (Tr. 799, 1034 Payne). The website also indicated he should not talk to co-workers about the Petition in work areas. Accordingly, he tried to only talk to people in the break room or out near "the smoke shack" (Tr. 1027 Payne).

In addition, Mr. Payne testified that when he approached his co-workers about signing the Petition, he would typically start by asking how they felt about the Union or how well they thought the Union at AmeriPride represented the employees (T. 799 Payne). In that regard, he often compared the representation the Union provided employees at AmeriPride to his experience with Union representation as an employee of National Linen – telling employees the union at National Linen fought for the employees, but the union at AmeriPride only fought for certain people (T. 800-01 Payne).

If a particular co-worker wanted to read or sign the Petition, Mr. Payne attempted to present it in a way that allowed them to read the introductory paragraph, but without exposing the names of other employees who had signed (Tr.802 Payne). To that end, when showing the front page for example, Mr. Payne folded the lower half of the paper over to cover the names so that only the top part remained visible. Although pages 2 and 3 did not have the introductory paragraph at the top, Mr. Payne would similarly attempt to cover the names of signees as other people considered

signing the Petition (Tr. 803 Payne). [34]

After collecting signatures over the next two months, Mr. Payne submitted the Employee Petition to Customer Account Manager Ricky Lauderdale on January 15, 2016 (Tr. 852-53 Payne; 1863-64 Lauderdale). In that regard, Jamie Payne came to Mr. Lauderdale's office early that afternoon and handed him the Employee Petition (R-11) saying, "I would like to turn this in to you. Am I supposed to turn this in to you?" (Tr. 1863 Lauderdale). Mr. Lauderdale looked the Petition and replied "I can receive this." (Tr. 1864-65 Lauderdale). At that point, Mr. Payne left the office and went back to work (Tr. 853 Payne; 1864 Lauderdale). [35]

After Mr. Payne left his office, Mr. Lauderdale carefully reviewed the Employee Petition – including the language on the top portion of the Petition as well as the employee names (Tr. 1865 Lauderdale). He then ran a report of all active bargaining unit employees and used the report to verify that the Employee Petition contained the signatures of current AMP employees and members of the Memphis bargaining unit (Tr. 1865-66; R-45).

---

[34] Mr. Payne also testified that he did not staple the pages together, so that each page remained separate – making it easier to cover the names on each page while keeping the top paragraph visible on page one (Tr. 803 Payne).

[35] During the afternoon portion of the first day of Mr. Payne's testimony, when asked on direct examination what time day he recalled turning the petition in to Ricky. Lauderdale, Mr. Payne testified "I think was that morning when I came in." (Tr. 853 Payne). Although Mr. Lauderdale recalled Mr. Payne came to his office in the afternoon, this discrepancy does not undermine the credibility of either witness. Mr. Payne testified that he "thought" it was in the morning – certainly not a definitive recollection. Moreover, Mr. Payne had been at the hearing the entire day after spending the previous night with his father, who had suffered a heart attack the previous afternoon. Addition to his lengthy day, Mr. Payne's testimony was interrupted mid-morning to enable Counsel for the General Counsel to call Ms. Lucretia Lewis as part of its case-in-chief. In that regard, Mr. Hearne was allowed to call Ms. Lewis "out of turn" because she had previously refused to comply with the General Counsel's subpoena. After Mr. Payne returned to the stand that afternoon, he became so exhausted on the stand he could barely respond to questions. At that point, Judge Sandron suspended his testimony for that day and he was recalled to complete his testimony when the hearing reconvened in August 2017. In light of the ordeal that Mr. Payne experienced during his first day of testimony, Respondent submits that inaccurately recalling whether he submitted the Petition to Mr. Lauderdale in the morning or in the afternoon should not undermine Mr. Payne's credibility,

Comparing the employee list to the names on the Petition, Mr. Lauderdale concluded that each person who had signed the Employee Petition was a current Memphis production employee and member of the bargaining unit (Tr. 1865-66 Lauderdale). Moreover, Mr. Lauderdale also verified that the Employee Petition contained signatures from at least 50% of the bargaining unit employees (Tr. 1866 Lauderdale).[36]

At that point, Mr. Lauderdale then contacted then-Corporate Director of Labor Relations and Human Resources Theresa Schulz for direction on how to proceed (Tr. 1868 Lauderdale). He informed Ms. Schulz that he had been presented an employee petition stating that the employees no longer wanted union representation (Tr. 1869 Lauderdale). Mr. Lauderdale also informed her the Petition contained signatures from over 50% of the bargaining unit (Tr. 1868 Lauderdale).[37]

Together with General Manager Kenny Morehead, Mr. Lauderdale and Ms. Schulz re-verified the validity of the employee signatures on the petition and re-confirmed that 27 of 50 bargaining unit employees had signed the Petition. They also examined the specific introductory language to confirm whether the Petition expressed the employee's desire for decertification or a rejection of union representation. In that regard, the prefatory language expressly stated that if the signatories to the Petition composed 50% or more of the bargaining unit, the signatories requested that the AmeriPride withdraw recognition form the Union. In other words, the Employee Petition signed by a majority of the bargaining unit employees reflected the employee's desire to remove the Union as bargaining representative.

---

[36] In that regard, the Employee Petition included signatures from 27 of 50 bargaining unit employees (54%).

[37] Prior to January 15, 2016, Mr. Lauderdale had heard a "rumor" about the petition from Sheila Dogan during a meeting on November 11, 2015. Prior to January 15, 2016, however, Mr. Lauderdale never saw the Employee Petition, nor had he ever discussed it with any non-management employee of AMP (Tr. 1869-70 Lauderdale).

As a result, they concluded that the Employee Petition – supported by the signatures of 27 of 50 bargaining unit employees provided objected evidence that the Union the lost majority support of the Memphis the bargaining unit.

In light of the foregoing, on the afternoon of January 15, 2016, General Manager Kenny Morehead later sent a letter to Union Vice President Harris Raynor with a copy of the Employee Petition, notifying the Union that AmeriPride was withdrawing recognition from the Union as exclusive bargaining representative effective January 16, 2016 because the Union no longer enjoyed majority support from the bargaining unit employees. Specifically, the letter withdrawing recognition from the Union stated:

> Be advised that effective upon the expiration of the current contract at midnight on Friday, January 15, 2016, AMP Services is withdrawing recognition from Workers United, SEIU, Southern Regional Joint Board as the representative of any employees at our Memphis, TN facility. We are withdrawing recognition at the request of our employees. In that regard, we were presented a petition signed by at least fifty percent (50%) of the employees in the former bargaining unit expressly stating they no longer want to be represented by your union. Because Workers United, SEIU, Southern Regional Joint Board no longer represents a majority of bargaining unit employees, it is unlawful for AMP to continue to recognize your union as the employee's bargaining agent.

(GC-25 p. 3).

LEGAL ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE GENERAL COUNSEL RELIED UPON FALSIFIED DOCUMENTATION AND FABRICATED TESTIMONY TO SUPPORT THE ALLEGATIONS AGAINST RESPONDENT

AMP contends the Consolidated Complaint should be dismissed in its entirety because the General Counsel's entire case in built upon falsified documentary evidence and the inconsistent, implausible, and completely fabricated testimony of witnesses who lacked any semblance of credibility.

A finder of fact is required to make credibility determinations based on the character and demeanor of witness testimony, and to draw inferences as to the veracity and credibility of the testimony based on those determinations. *NLRB v. Walton Mfg., Co*., 369 U.S. 404, 407 (1962). Likewise, the Board has held that an Administrative Law Judge may justifiability reject witness testimony and infer the exact opposite based on credibility findings that the testimony in question is false or otherwise unreliable. *See e.g., Alvin J. Bart & Co.*, 236 NLRB 242 (1978).

In addition to over-all demeanor, witness credibility may also turn on "the inherent probability or improbability of testimony, contradiction of witness on a material matter by his own contrary statement or by another witness called by the same party; failure to offer, produce on request, or account for the absence of supporting records; and failure to call material witnesses. *Pet, Inc.*, 229 NLRB 1241, 1243 (1977); *Eastern Coal Corporation*, 79 NLRB 1165, 1166 (1948), *enfd*. 176 F.2d 131 (4th Cir. 1949).

A. UNION BUSINESS AGENT SHEILA DOGAN FABRICATED TESTIMONY AND FALSIFIED PURPORTED WITNESS STATEMENTS ON MATERIAL ISSUES

Union Business Agent Sheila Dogan falsified at least two employee witness statements and forged the employee signatures on those documents.

On cross-examination, Ms. Dogan testified about a handwritten statement allegedly provided by Harvey Streater (5870-572 Dogan; R-8). In referencing this statement from Streater, Ms. Dogan states 8 separate times in a sworn affidavit she provided to the Board on March 9, 2016 that Mr. Streater "wrote" the content of the statement (570-572 Dogan). Subsequently, in a different sworn affidavit she provided to the Board on October 4, 2016, Ms. Dogan presented a completely different narrative - then claiming that Mr. Streater actually came to her home office one evening and she wrote out what he told her and then he signed the 2-page document (Tr. 574 Dogan).

When Mr. Streater testified, however, he not only denied ever dictating the statement to Ms. Dogan (Tr. 625-26 Streater), he denied that the two "Harvey Streater" signatures that appear at the top of each page of R-8 are not his signatures (Tr. 628 Streater).

In light of these apparently falsified and forged documents, Respondent requested Forensic Document Examiner Grant Sperry to compare known and verified examples of Mr. Streater's signatures and handwriting to the 2-page handwritten statement and signatures attributed to Mr. Streater in R-3. Based on his expert professional opinion, Mr. Sperry concluded, Forensic Document Examiner Grant Sperry examined the 2-page handwritten statement and signatures ascribed to Mr. Streater and confirmed that determined that there were innumerable differences between the writing habits of Mr. Streater, as reflected in the known writings and when compared to the questioned Harvey Streater signatures on both pages 1 and 2 at the top of Respondent Exhibit 33. . . . It's my conclusion that its highly probable Harvey Streater, as reflected in his known writings, did not write the Harvey Streater signatures or entries at the top of pages 1 and 2 (Tr. 1489 Sperry).

Similar to the situation with the falsified witness statement of Harvey Streater, that is also credible evidence that Ms. Dogan also forged the signature of Melvin Boddie on a statement she claims he provided to her concerning Respondent's alleged direct dealing. In that regard, R-3 is a one-page handwritten statement allegedly signed by Mr. Boddie describing a purported conversation with Brian Forehand.

On direct examination by Counsel for the General Counsel, however, Mr. Boddie denied ever seeing the document and further testified the "Melvin Boddie" signature at the bottom of the page was not his signature. In that regard, Respondent again requested Mr. Sperry to review known

and verified examples of Mr. Boddie's signature to the signature on the handwritten statement (R-3). Based on his expert professional opinion, Mr. Sperry concluded that "to a highly probably degree. It's highly probable that Melvin Boddie did not write the Melvin Boddie signature on the particular document, the original (Tr. 1481 Sperry).

In light of the foregoing, the record evidence demonstrates that Ms. Dogan forged signatures and falsified documents attributed to employees to essentially fabricate evidence to support the allegations against Respondent.[38] Ms. Dogan's willingness to fabricate testimony and falsify evidence against Respondent demonstrates an egregious lack of credibility. More importantly, it completely undermines the integrity and veracity of the General Counsel's entire case.

B SHEILA DOGAN'S TESTIMONY WAS INTERNALLY INCONSISTENT AND COMPLETELY UNTRUSTWORTHY AND SHOULD BE DISCREDITED

In addition to falsifying purported witness statements and forging employee signatures, Ms. Dogan's hearing testimony was completely untrustworthy. As explained further below, some parts of her testimony were internally inconsistent and totally implausible – raising additional concerns about her veracity.

In that regard, her testimony changed to fit what whatever particular narrative seemed to support an allegation against Respondent. For example, with regard to the so-called "Boddie grievance," Ms. Dogan initially testified that she filed the grievance on behalf of Mr. Boddie (dated December 9, 2015) after she had first met with Brian Forehand and Ricky Lauderdale to discuss

[38] Ms. Dogan's willingness to lie, fabricate documents, and forge signatures is particularly troubling considering that she provided six separate sworn affidavits with 40 pages of attachments to the Board in connection with its investigation of the unfair labor practice allegations made against Respondent (Tr. 405).

Mr. Boddie's concerns about the shift switch. Ms. Dogan later changed her testimony, however, when the General Counsel offered GC-34 – composed of an e-mail thread showing that Ms. Dogan had met with Mr. Forehand to discuss the grievance on December 23, 2015. Upon introduction of the e-mail thread, Ms. Dogan quickly changed her testimony to fit the time line of the e-mails – claiming that she now remembered filing the grievance before she met with Mr. Forehand.

Notably, Ms. Dogan's original testimony was correct. In that regard, the cover e-mail attached to the grievance document (GC-33) is dated December 9, 2015 and contains a brief paragraph intended for Kenny Morehead. This paragraph specifically references the "management rights" argument that Ms. Dogan recalls Mr. Forehand made during their meeting.

2. SHEILA DOGAN'S TESTIMONY REGARDING THE MEETING ON NOVEMBER 4, 2015 IS FALSE AND SHOULD NOT BE CREDITED

According to Ms. Dogan, the first communication she had with the Company regarding the new vacation benefit after she received the September 23rd e-mail from Ricky Lauderdale occurred in early November 2015 (Tr. 325 Dogan). Ms. Dogan testified that she contacted Brian Forehand at that time to set up a meeting to discuss the vacation policy after she received a complaint from an employee who was allegedly told "they were not going to receive the $400 [vacation] payment because of the Union." (Tr. 328-029 Dogan).[39]

On November 4, 2015, she and Harvey Streater then met with Mr. Forehand and Mr. Lauderdale to discuss the vacation policies issue. According to her testimony, Ms. Dogan opened the meeting by indicating she had concerns regarding the employee complaint about not receiving a $400 payment. She also stated the Union had not "signed off" on the implementation of the vacation program or that there would be workers who would lose a week of vacation. Ricky

[39] Ms. Dogan further testified that this was the first time she had heard anything about "adversely affected" employees in relation to the vacation policy (Tr. 327 Dogan).

Lauderdale supposedly responded by saying the Company was going to implement the new vacation policy anyway and said that the Company had talked to the workers who would lose a week of vacation under the policy, and planned to pay them $400.00 (Tr. 330-31 Dogan).

Unfortunately for the General Counsel, the underlying premise of Ms. Dogan's narrative is demonstrably false. In that regard, Ms. Dogan predicates this meeting on a supposed employee complaint. According to Ms. Dogan, someone told this phantom employee they would not receive their $400 payment because of the Union. It was because of this employee complaint that Ms. Dogan set up the meeting in order to tell the Company that the Union had not signed off of the vacation policy, etc.

The veracity of this story falls apparent, however, when you consider that, until the Union made clear they objected to the vacation policy – which Ms. Dogan claims she did at this meeting – there would be absolutely no reason for any employee to be considered about receiving the $400 lump sum payment. In that regard, the $400 payment would be in jeopardy only if the Company did not implement the vacation policy – which, according to Ms. Dogan, the Company insisted it was going to do regardless of whether the Union agreed.

Ms. Dogan piled on too many lies to make is look like if she objected to the vacation policy during the meeting on November 4. However, based on the false narrative created by Ms. Dogan, no employee would have complained about not receiving the $400 (nor would anyone blame the Union for employees not getting such payment) until after the November 4 meeting when the Union supposedly objected the vacation policy. Going one step further, if Ms. Dogan had objected to the vacation policy during the November 4th meeting as she claims and had the Company actually responded by saying they would implement the policy regardless – there would be no

reason for an employee to claim they were not getting the money, nor any reason to blame the Union for anything.

C. THE TESTIMONY OF HARRIS RAYNOR WAS INHERENTLY UNRELIABLE AND SHOULD NOT BE CREDITED

AMP contends the testimony of Harris Raynor was inherently unreliable and should not be credited. In that regard, Mr. Raynor admitted to having no personal knowledge of many of the critical communications and events at issue in this case – effectively stripping his testimony of any probative value. Raynor's faulty memory further undermines the reliability of his testimony. Several times on both direct and cross-examination, Mr. Raynor referenced that his "poor memory" might affect his testimony regarding of certain events – ultimately reflected in numerous inaccuracies and leaving his testimony highly suspect and untrustworthy. Finally, numerous examples of Mr. Raynor's false and self-serving allegations (calculated to support the General Counsel's case-in-chief) completely undermine the veracity of his testimony.

1. MR. RAYNOR'S TESTIMONY LACKS PROBATIVE VALUE

Mr. Raynor's testimony lacks of little probative value and should not be credited. In that regard, the record evidence reveals that Mr. Raynor has no direct knowledge of any of the events regarding the production incentive beta test, no personal knowledge of AMP's initial roll-out and communications regarding the standardization of the vacation benefit, no first-hand knowledge regarding the employee petition to remove the Union or Mr. Payne's efforts to obtain signatures on the petition, and no direct knowledge of any of the discussions between Ms. Dogan and AMP management or any purported meetings between AMP and the employees.

Rather, Mr. Raynor's "knowledge" of these critical events came from Business Agent Sheila Dogan. In fact, Mr. Raynor admitted on cross-examination that his only knowledge of the

content of conversations between Ms. Dogan and AMP management are based on what Sheila Dogan may have told him (Tr. 229 Raynor). In other words, Mr. Raynor's knowledge and perception of the critical issues and events involving the Memphis Branch were filtered through the dark lens of Sheila Dogan.

As noted above, however, Ms. Dogan is completely bereft of credibility and any information coming from her should be considered inherently suspect and untrustworthy. In that regard, Her hearing testimony contained numerous falsehoods and internal inconsistencies. More importantly, the record evidence established that Ms. Dogan provided false information to the Board during its charge investigation and submitted falsified witness statements with forged employee signatures.

2. MR. RAYNOR'S TESTIMONY WAS HIGHLY SUSPECT AND INHERENTLY UNTRUSTWORTHY

During his testimony, Mr. Raynor repeatedly referenced having a "poor memory." To that point, Mr. Raynor's testimony regarding the 2013 negotiations provides clear indication of his poor memory. For example, Mr. Raynor testified the negotiations for the 2013 collective bargaining agreement between the Union and AMP began sometime in December 2012 – before the contract expiration date, However, the parties' first bargaining session for the 2013 contract actually took place in mid-January 2013 – after the prior contract had expired. In addition, Mr. Raynor's testimony that he took over the AMP negotiations from Union President Brad Rayson "around mid-December 2012." is directly contradicted by a letter to Kenny Morehead and signed by Raynor himself dated February 12, 2013 in which Mr. Raynor informs AMP that he will be taking over the negotiations on behalf of the Union (R-1). Finally, Mr. Raynor also claimed that the 2013 negotiations were concluded quickly.

None of Mr. Raynor's characterizations of the 2013 negotiations is true, however. There is no question that a witness can have a bad memory without necessarily being dishonest. Thus, attributing the many factual inaccuracies of Mr. Raynor's testimony to a "poor memory" makes any uncorroborated testimony inherently untrustworthy. However, Mr. Raynor's questionable recollection of the 2013 negotiations significantly mischaracterizes the timeline of the 2013 negotiations in a way that also happens to support the Union's false narrative that AMP engaged in bad faith bargaining.

In addition, Mr. Raynor's claim that AMP failed to provide the Union a copy of its drug testing policy as requested during the 2016 bargaining is simply false (Tr.132 Raynor). In that regard, Item 29 on Company Proposal No. 1 provided that the employer could institute a drug and alcohol testing policy compliant with state and federal law (R-26). During the parties' discussion regarding Item 29 on January 6, Mr. Raynor requested a copy of the proposed policy (Tr. 1356-57 Morehead; R-26). At 3:29 p.m. on January 6, 2015, Mr. Morehead e-mailed a copy of the Company Drug Free Workplace Policy to Mr. Raynor with a cover note stating "As requested." (Tr. 1357 Morehead; R-31). The top e-mail of this e-mail thread is Mr. Raynor's response to Mr. Morehead regarding the drug and alcohol policy, sent by Mr. Raynor at 4:443 p.m. on January 6, 2016 (R-31). Thus, contrary to Mr. Raynor's testimony, AMP did provide a copy of the drug policy.

D. THE TESTIMONY OF EMPLOYEE SONJA JACKSON WAS COMPLETELY UNRELIABLE AND SHOULD NOT BE CREDITED

Although production employee Sonja Jackson testified as part of the General Counsel's case-in-chief under threat of subpoena enforcement, the exact purpose of her testimony remains unclear. In part, she testified that when Jamison Payne approached her about signing the petition,

he did so when she was on working time and that he told her she needed to sign the petition in order to get vacation pay.

On its face, Ms. Jackson's testimony about the circumstances of her signing the petition are completely irrelevant. As Judge Sandron noted during her direct examination, Mr. Payne is not a supervisor or agent of the employer – so whatever he might have said to Ms. Jackson when he showed her the petition cannot be imputed to AMP and is therefore irrelevant. Moreover, Ms. Jackson expressly admitted there were no supervisors nearby when Mr. Payne spoke to her about the petition (Tr. 991 Jackson). Thus, even if Mr. Payne approached Ms. Jackson while she was working as she claims, there is no evidence AMP was aware that he had solicited signatures during working time. Thus, even if true, Ms. Jackson's testimony does not support a single allegation of the Complaint.

In addition to being irrelevant, AMP also contends that Ms. Jackson's testimony regarding Mr. Payne is both implausible and inherently untrustworthy. Ms. Jackson claims that Jamie Payne never mentioned the purpose of the petition was to remove the union, but rather stated only that she needed to sign the petition in order to get her vacation pay. However, it would make no sense for Mr. Payne to make that statement to Jackson because he was not privy to information about which employees would be adversely impacted under the new vacation accrual or which employees were told they would receive a lump-sum payment from AMP. Thus, her testimony in that regard is inherently implausible.

Ms. Jackson's faulty and confused recollection of important facts further undermines her credibility. For example, she repeatedly testified that the meeting she attended occurred in November-December 2014 (Tr. 970, 992 Jackson). In fact, at one point she specifically "recalled" that the meeting occurred shortly after AMP first hired her – which was in November 2014 (Tr.

993 Jackson). However, the meeting in which AMP announced the new vacation benefits occurred in September 2015.

In addition, Ms. Jackson's testimony regarding how she learned about the potential loss of vacation time is internally inconsistent. Initially, she testified on direct examination that she was not told about the potential loss in vacation time from any manager or supervisor:

> Q: [BY MR. HEARNE] Were you ever informed that you were potentially going to lose a week of vacation time?
>
> A: [BY MS. JACKSON] Yes, I was informed that.
>
> Q: How did you find out about this possibly losing a week of vacation time?
>
> A: In a conversation. I was just nothing where a supervisor or anything approached. Just like maybe – well, but it is like somebody else might've heard it before I heard it.
>
> Q: [BY JUDGE SANDRON] Did you ever hear that directly from any supervisor or manager?
>
> A: No sir. No sir.
>
> * * *
>
> Q: [BY JUDGE SANDRON] Maybe we could just ask so we could just make sure we get her full recollection. Do you remember any supervisors or managers ever saying anything on the subject to you?
>
> A: No.

(Tr. 972-73 Jackson).

However, Ms. Jackson later testified that Production Manager Brian Forehand had told her that she would be receiving a $400 payment to off-set the loss in vacation time due to the new accrual schedule (Tr. 963). Thus, contrary to her earlier testimony, Ms. Jackson eventually

admitted that a manager or supervisor spoke to her about the potential loss of vacation time when AMP informed her about the $400 payment.[40]

Ms. Jackson's testimony was also demonstrably untruthful. In that regard, Ms. Jackson repeatedly testified that she never received the promised $400 payment (Tr. 1004-05, 1007 Jackson). However, the record evidence shows that on December 11, 2015, AMP paid to each employee adversely impacted under the new vacation benefit – including Ms. Jackson – a lump-sum of $400 to off-set the difference in the accrual formula (Tr. 1828 Lauderdale; R-43). Ms. Jackson's testimony to the contrary is patently false.

Furthermore, on several significant topics, Ms. Jackson's testimony was internally inconsistent and contradictory. For example, with regard to her alleged conversation with Jamie Payne about the petition, Mr. Payne spoke "only to her" and "pretty much everyone else" at the same time. In that regard, Mr. Hearne asked her on direct examination:

> Q: [BY MR. HEARNE] You said this was during your work time Mr. Payne came to your work area to talk and was talking. Was he talking just with you or was he talking to everybody there?
>
> A: [BY MS. JACKSON] Pretty much everybody that was around, but we was working, and he was just asking about signing the petition as we was working.

(Tr. 978-79 Jackson).

On cross-examination, however, she testified Mr. Payne was talking just to her:

> Q: [BY MR. PETERS] How many people participated in this conversation that you had with Jamie Payne when you signed the petition. . . I'm trying to find out if

[40] Similar to her flawed recollections regarding the all-employee meeting, Ms. Jackson inaccurately testified that Brian Forehand informed her about the $400 payment sometime in November or December 2014 (Tr. 1007 Jackson). However, Mr. Forehand did not meet with the individual employees about the lump-sum payout. Rather, Kenny Morehead and Ricky Lauderdale met separately with the individual employees on September 29, 2015.).

there were other people that were participating in the conversation or if it was a one-on-one conversation with her?

A: [BY MS. JACKSON] When we was talking, he was only talking to me.

Q: Only talking to you?

A: Yes sir.

(Tr. 996-997).

Likewise, Ms. Jackson testified on cross-examination that when Mr. Payne spoke to her about the petition, co-worker Theresa Bramlett was standing "maybe two feet away" from her (Tr. 997-999 Jackson). And, several temporary employees were standing within 10 feet of them (Tr. 997 Jackson). In stark contrast to her hearing testimony, however, the sworn Affidavit Ms. Jackson provided to the Board during its investigation expressly states, "No one else was standing there when I spoke with Payne about the petition, but I see people walking past us." (Tr. 1002 Jackson). Thus, Ms. Jackson's sworn Affidavit says nothing about either Theresa Bramlett or any temporary employees standing nearby – in direction contradiction of her hearing testimony.

When asked to explain this rather glaring conduction, Ms. Jackson stammered to come up with an explanation. She finally responded, "Well, it was like more so she [Theresa Bramlett] was just standing. She knows this, so it was more like she's just standing there." (Tr. 1003 Jackson). However, Ms. Jackson's supposed "explanation" for her inconsistent statements merely adds to the confusion – there's is no way that "no one else was standing there" and "Theresa Bramlett was just standing there" can both be true.

Ms. Jackson's testimony also includes contradictions regarding the employee meeting about vacation benefits. For example, Ms. Jackson testified on direct examination from Mr. Hearne that she learned about the changes to the vacation benefits during an employee meeting conducted

by Kenny Morehead (Tr. 969-71 Jackson). In that regard, Mr. Hearne specifically asked Ms. Jackson how she learned about the change to the vacation accrual:

> Q: [BY MR. HEARNE] This change [to how they calculated vacation time], how did you actually hear about that they were going to be making these changes?
>
> A: [BY MS. JACKSON] In a meeting at work.
>
> Q: What kind of meeting?
>
> A: Employee meeting about the upcoming year, the benefits and things for the new year, for 2015, if I'm not mistaken.

(Tr. 970 Jackson).

Ms. Jackson later directly contradicts this testimony – stating that benefit changes were not discussed at the employee meeting:

> Q: [BY JUDGE SANDRON] Do you recall if [Mr. Morehead] said anything about any changes? Do you recall if Mr. Morehead said anything about changes in benefits?
>
> A: [BY MS. JACKSON] Not in the meeting. No.

(Tr. 972 Jackson).

In sum, Ms. Jackson's testimony goes beyond being merely "internally inconsistent" – her testimony is "internally contradictory." In that regard, Mr. Payne could not have been talking to "pretty much everyone that was around" and "only to her" at the same time. Nor is it impossible that both "no one else" and Theresa Bramlett could stand next to Ms. Jackson at the same time. It is astonishing that, according to Ms. Jackson's testimony, no benefit changes were discussed (Tr. 972 Jackson) at the very meeting in which she learned about the upcoming changes in benefits (Tr. 970 Jackson).

In light of the foregoing, Ms. Jackson's nonsensical testimony was inherently unbelievable, internally contradictory, and completely unreliable. The bottom line is that there is absolutely no

way her multiple versions of fact can be true – no way to tell when Ms. Jackson is telling the truth, and when she's not. Accordingly, Ms. Jackson's testimony should not be credited.

V. THE TESTIMONY OF PATRICIA PORTER WAS INTERNALLY INCONSISTENT AND INHERENTLY UNRELIABLE AND SHOULD NOT BE CREDITED

Counsel for the General Counsel called production employee (and former Union Officer) Patricia Porter to testify in support of its case-in-chief. AMP contends that Ms. Porter's testimony was internally inconsistent and inherently unreliable. Overall, Ms. Porter's testimony was not believable and should be discredited.

Throughout her testimony, Ms. Porter not only confused the dates and order of various meetings (Tr. 661, 664 Porter), but her recollection of time frames where meetings allegedly occurred was completely implausible. For example, during her direct examination by Mr. Hearne, Ms. Porter specifically recalled that the meeting where Kenny Morehead announced changes to the vacation benefit occurred about a week before the parties met to negotiate the new contract – which she recalled was in early January 2015 (Tr. 655 Porter).

Confusing the record even further, Ms. Porter testified that she learned about the employee petition to remove the Union in October 2015, just a few weeks after the meeting she attended about the vacation benefits (Tr. 661 Porter 661). Then, on cross-examination by Mr. Peters, she recalled that the meeting where Kenny Morehead announced the benefit changes occurred between Christmas 2015 and New Year's Day 2016 (Tr. 678-79 Porter).

In addition to confusing dates, Ms. Porter's testimony also includes significant inaccuracies that undermine completely the veracity of her testimony. For example, according to Ms. Porter's testimony, although she could not remember the dates, she remembered attending two grievance meetings at the Starbucks Coffee Shop at the intersection of Union and McLean in Memphis (Tr.

669-670 Porter). In that regard, Ms. Porter recalled that Kenny Morehead and Ricky Lauderdale attended the first "Starbucks" meeting on behalf of the Company. However, Brian Forehand attended the first meeting at Starbucks – not Kenny Morehead.

While these glaring inaccuracies certainly undermine the reliability of Ms. Porter's testimony, they do not necessarily mean she was untruthful. However, Ms. Porter's testimony also contains serious conflicts on material matters that significantly undercut her veracity. For example, Ms. Porter testified that Mr. Morehead expressly instructed her to clock out before she attended the second Starbuck's meeting. In that regard, Ms. Porter's time records support her testimony – reflecting that she clocked out before the second Starbucks meeting (R-10) and that she did not clock out before the first meeting (R-9)

Ms. Porter then testified that she clocked out for the second meeting and then rode with Sheila Dogan to the grievance meeting (Tr. 673-74). In fact, Ms. Porter specifically recalled that she informed Ms. Dogan that Morehead required her to clock out as they rode to the Starbucks together for the second grievance meeting (Tr. 675 Porter).

However, she subsequently changed her testimony – later remembering that Ms. Dogan drove her to the first Starbucks meeting and that Antonio Shannon actually drove her to the second meeting (Tr. 688 Porter). Again, her testimony is clearly unreliable but her testimony about who she rode with to the meetings reflects more than just a bad memory. She initially testified that she told Ms. Dogan about having to clock out as they rode together to the second meeting – but that cannot be possible since she rode with Mr. Shannon to the second meeting. How could she tell Ms. Dogan anything during the ride to the second meeting when she actually rode to the second meeting with Mr. Shannon? Both versions of her testimony cannot possibly be true.

Ms. Porter also provided false testimony by insisting that she was not late for the second meeting. In that regard, there is no dispute that the second Starbucks meeting started at 1:30 p.m. When asked on cross-examination whether she was late for that meeting, however, Ms. Porter insisted that she and Mr. Shannon arrived for the meeting on time (Tr. 688 Porter). In fact, on two separate occasions she testified that she was not late for the second meeting.

Contrary to her testimony, however, Ms. Porter's time record for that day reflects that Ms. Porter clocked out at 1:33p.m. (Tr. 690, 694 Porter; R-10). Obviously, if Ms. Porter left after 1:30 to go to a meeting scheduled to begin 1:30 – there is no possible way that she could have been on time for the meeting.

Of course, this inconsistency could simply be yet another example of Ms. Porter's extremely poor recollection. Her time record shows unequivocally that she could not have been on time for that meeting. Yet, she insisted that she was not late. Without using a time machine, both versions of her testimony cannot possibly be true – unless she was not the person who punched out her time card. If Ms. Porter actually was on time for the meeting – just as she testified, but someone else clocked her out at 1:33p.m. (possibly to help the Union manufacture a false claim that Kenny Morehead instructed her to clock out that day) – then it is possible Ms. Porter arrived on time.

II. RESPONDENT LAWFULLY WITHDREW RECOGNITION FROM THE UNION

A. AMERIPRIDE WITHDREW RECOGNITION BASED ON OBJECTIVE EVIDENCE THE UNION LOST MAJORITY SUPPORT

1. AN EMPLOYER MUST HAVE OBJECTIVE PROOF THE UNION LOST MAJORITY STATUS

An employer may lawfully withdraw recognition from an existing union after expiration of the collective bargaining agreement only if the employer can establish through objective evidence that the union lost its status as majority representative. *Levitz Furniture Co. of the Pacific*,

333 NLRB 717 (2001) (The test for an employer's withdrawal of recognition from a union is no longer the good faith doubt test but whether the employer is in possession of evidence that the union has in fact lost majority support).

Under *Levitz*, the essential element to establish a lawful withdrawal of recognition by an employer is whether the employer had evidence that the Union had lost majority support at the time it withdrew recognition. *Id*. An employer can defeat an allegation that its withdrawal of recognition (and its post-withdrawal refusal to bargain) are unlawful by showing that the Union had actually lost majority support at the time it withdrew recognition. *Scomas of Sausalito, LLC*, 362 NLRB No. 174 (2015). *See Alpha Associates*, 344 NLRB 784-785 (2005) (the Board held that, "an employer may withdraw recognition from the union only if it possesses evidence that the union has in fact lost majority support.").

Consistent with that authority, a petition signed by a majority of bargain unit employees that "unambiguously expresses" the employee's desire to reject union representation provides the requisite "objective evidence" to justify lawful withdrawal of recognition. *See Anderson Lumber Co*, 360 NLRB 583, 542–544 (2014), enfd. 801 F.3d 321 (D.C. Cir. 2015) (whether petition language is ambiguous is one factor the Board considers to determine whether a respondent has met its burden under *Levitz* to show by a preponderance of evidence that the union had actually lost majority support at the time it withdrew recognition). *See also Wurtland Nursing & Rehabilitation Center*, 351 NLRB 817, 818–819 (2007).

Whether a petition "unambiguously expresses the employee's desire the reject the Union," requires careful examination of the language used on a petition (together with other objective evidence), to determine whether the employer could reasonably interpret the specific petition language to establish that a majority of employees no longer support the union. *Anderson Lumber*,

360 NLRB at 542–544 (a respondent's reliance on ambiguous proof must be based on a reasonable interpretation of that proof in light of all the objective evidence).

In other words, to provide objective evidence of the Union's loss of majority support, a petition signed by a majority of the bargaining unit employees must unequivocally state that employees no longer support the union or otherwise express the employee's desire remove the union as bargaining representative.

In finding that the employer lawfully withdrew recognition, the Board in *Wurtland Nursi*ng, determined that petition language relied upon by the employer stating the employees "wished for a vote to remove the Union" sufficiently established an actual loss of majority support, rather than a request for a decertification election. *Wurtland Nursing*, 351 NLRB at 818–819. According to the Board, interpreting "a vote to remove the union" as meaning the employees wished to end the union's status as their exclusive collective-bargaining representative was a more reasonable interpretation of the language on the petition. *Id*. *See also Renal Care of Buffalo, Inc*., 347 NLRB 1284, 1284–1286 (2006) (a petition containing the requisite number of valid signatures that unequivocally stated that employees do not support the union and that they seek a withdrawal of recognition was sufficient proof to establish loss of majority support),

B. THE PETITION RESPONDENT RELIED UPON TO WITHDRAW RECOGNITION PROVIDED SUFFICIENT OBJECTIVE EVIDENCE OF THE UNION'S LOSS OF MAJORITY SUPPORT

AMP withdrew recognition from the Union based on an employee Petition signed by 27 of 50 bargaining unit employees. Although there is no question that 27 of 50 employee constitutes a majority of the bargaining unit, the necessary inquiry for Respondent under *Levitz* and its progeny is whether the Petition provides sufficient evidence objective evidence of the union's loss of majority support to support withdrawing recognition.

In that regard, upon receiving the petition, Respondent ran a report of all active bargaining unit employees at the Memphis plant and used the report to verify that the Employee Petition contained the names and the signatures of current AMP employees who were also members of the Memphis bargaining unit.[41] Based on that review and analysis, Respondent concluded that each person who had signed the Employee Petition was, in fact, a current Memphis production employee and a current member of the bargaining unit.

Thereafter, Respondent also verified that the Employee Petition contained signatures from at least 50% of the bargaining unit employees (Tr. 1866 Lauderdale). Comparing the number of signatures on the Employee Petition to an accurate roster of current bargaining unit members revealed that the Employee Petition was supported by signatures from 27 of 50 bargaining unit employees (54%). [42]

Even though the number of employee signatures on the Petition unquestionably reflects a majority of the Memphis bargaining unit, a majority of signatures does not necessarily mean loss of majority support. Indeed, the final element necessary for an employer to establish requisite

---

[41] There is no issue in this hearing regarding the authenticity of the signatures on the petition. In that regard, Counsel for General expressly agreed on the record that the authenticity of the employee signatures on the petition is not an issue in this hearing (Tr. 1899-90). Moreover, at the hearing Judge Sandron specifically asked the "validity of the petition itself is not an issue here, is it?" (Tr. 1899-90). Counsel for the General Counsel responded "No." (Tr. 1900).

[42] The 27 Petition signatures used this analysis includes the signature of Sheila Wright. Ms. Wright had signed the Petition to Remove the Union in November 2015 but then subsequently signed a Union Membership Card in January 2016 – possibly calling into question her prior support for the Petition. However, less than two days after she signed the Union Membership Card, Ms. Wright revoked her signature and demanded that the Union return or cancel her Card. In light of Ms. Wright's "reversal of her prior reversal," Respondent contends her signature on the Petition continues to reflect her desire to remove the Union as bargaining representative. Even absent her signature, however, the Petition would be supported by 26 of 50 bargaining unit employees. Thus, although 52% is a slightly narrower margin than 54% – the Petition to Remove the Union supported by 52% of the unit nonetheless reflects the Union's loss of majority support. Accordingly, with or without the signature of Sheila Wright, the Employee Petition presented to Respondent on January 15, 2016 reflects the Union's loss of majority support.

"objective evidence" is to show that the signatures actually reflect the employee's desire to remove the union as bargaining representative (as opposed the employee's desire for decertification, deauthorization, or something else short of removal as representative.)

That particular determination requires analysis of the specific language used in the Petition. In that regard, the relevant prefatory language on the Petition expressly states:

> The undersigned employees of **AmeriPride** (employer name) do not want to be represented by **Constitution of the Southern Region of Workers United** (union name).
>
> * * *
>
> Should the undersigned employees make up 50% or more of the bargaining unit represented by **SEIU** (union name), the undersigned employees hereby request that **AmeriPride** (employer name) withdraw recognition from this union, as it does not enjoy the support of a majority of employees in the bargaining unit.

(R-11).

In light of the foregoing, the language of the introductory paragraph of the Petition states unequivocally that if the signatories to the Petition constitute 50% or more of the bargaining unit, the signatories requested that the AmeriPride withdraw recognition form the Union. The Employee Petition signed by a majority of the bargaining unit employees in Memphis, therefore, reflects the employee's desire to remove the Union as bargaining representative – and provides objective evidence of the Union's loss of majority support.

In light of the foregoing, the Employee Petition relied upon by Respondent to withdraw recognition from the Union provides objective evidence of the Union's loss of majority support. Accordingly, the record evidence shows that Respondent lawfully withdrew recognition from the Union effective January 16, 2016. *Highlands Hosp. Corp. v. NLRB*, 508 F.3d 28, 31 (D.C. Cir. 2007) (quoting *Levitz Furniture Co. of the Pac.*, 333 NLRB 717, 725 (2001) (When an employer

has objective evidence that a union has lost majority support, such as "a petition signed by a majority of the employees in the bargaining unit," it may unilaterally withdraw recognition.)

Therefore, the allegations set forth in Paragraph 16 and related any Paragraph of the Consolidated Complaint are without merit and should be dismissed.

C. GENERAL COUNSEL CANNOT ESTABLISH THE EMPLOYEE PETITION WAS TAINTED OR THAT THE WITHDRAWAL OF RECOGNITION WAS OTHERWISE UNLAWFUL

As noted above, the Employee Petition Respondent relied to withdraw recognition from the Union was supported by a majority of bargaining unit employees expressing their desire to remove the Union as bargaining representative. As such, the Petition provides objective evidence of the Union's loss of majority support and further supports the Respondent's lawful withdrawal of recognition from the Union effective January 16, 2016.

It is axiomatic, however, that an employer may not rely on an employee petition when the employer's unfair labor practices significantly contribute to the loss of majority status by undercutting the employees' support of the union. *NLRB v. Williams Enterprises*, 50 F.3d 1280, 1288 (4th Cir. 1995). Likewise, in *LTD Ceramics, Inc*., 341 NLRB 86 (2004), the Board held that evidence in support of a withdrawal of recognition, "must be raised in a context free of unfair labor practices of the sort likely, under all the circumstances, to affect the union's status, cause employee disaffection, or improperly affect the bargaining relationship itself." *Lee Lumber & Building Material Corp.*, 322 NLRB 174 (1996) (Lee Lumber II), affd. in part and remanded in part 117 F.3d 1454 (D.C. Cir. 1997), citing *Guerdon Industries*, 218 NLRB 658, 659, 661 (1975).

In light of the foregoing, the General Counsel case requires that he prove Respondent committed unfair labor practices that significantly contributed to the Union's loss of majority status. In that regard, the Consolidate Complaint alleges that AMP violated Sections 8(a)(1) and

8(a)(5) of Act by (1) withdrawing recognition of the Union as exclusive bargaining representative "absent the results of a Board election" (Complaint ¶16(b); GC Ex. 1) and (2) by allegedly committing unfair labor practices intended to undermine the union, coerce and encourage employees to sign the Employee Petition, and to otherwise support the employee effort to remove the Union (Complaint ¶16(b); GC Ex. 1). According to the General Counsel, these purported unfair labor practices tainted the Employee Petition, thereby making AMP's sequent withdrawal of recognition unlawful.

However, Respondent not only denies committing any of the alleged unfair labor practices, AMP presented extensive evidence at the hearing establishing unequivocally that it lawfully withdrew recognition based on objective evidence the Union lost its majority status. In that regard, and contrary to Complaint ¶16(b), federal labor law does not require a Board election prior to an employer's lawful withdrawal of recognition. Rather, Board law expressly allows an employer to withdraw recognition based on objective evidence that a majority of bargaining employees no longer want union representation.

Moreover, the General Counsel failed to establish the Employee Petition AMP relied upon to withdraw recognition was in any way coerced or tainted. As explained below, the General Counsel failed to present a single shred of credible evidence showing that Respondent acted to Likewise, the complaint allegations that AMP's repeated unfair labor practices caused sufficient employee disaffection with the Union to ultimately undermine the Union's majority support are completely unfounded and totally without merit.

In other words, AMP denies the allegations in the Consolidated Complaint, and further denies it violated the Act in way. To that end, the General Counsel cannot establish that AMP committed a single unfair labor practice as alleged in the Consolidated Complaint. Therefore, the

General failed its failed its burden of proof to establish that AMP unlawfully withdrew recognition from the Union.

A. GENERAL COUNSEL CANNOT PROVE AMP COMMITTED UNFAIR LABOR PRACTICES IN CONNECTION WITH THE PRODUCTION INCENTIVE BETA TEST

Counsel for the General Counsel contends that AMP committed certain unfair labor practices in connection with the production incentive beta test conducted in July-August 2015 that unlawfully dissuaded employee support for the Union and therefore tainted the employee petition. However, the record evidence fails to support the General Counsel's allegations.

1. THE COMPLAINT ALLEGATIONS REGARDING THE PRODUCTION INCENTIVE BETA TEST

With regard to In the Consolidated Complaint, Counsel for the General Counsel alleges that AMP violated Sections 8(a)(1) and (5) of the Act by failing and refusing to bargain with the Union regarding the production incentive. More specifically Paragraph 12(a) of Consolidated Complaint states, "[a]bout July 20, 2015, the Union requested that Respondent bargaining collectively about Respondent's plan to implement an incentive pay bonus for certain employees. Paragraph 12(b) further claims that "[s]ince about July 20, 2015, Respondent has failed and refused to bargain collectively with the Union' about the productivity incentive.

In addition, Counsel for the General Counsel further argues that AMP undermined support for the Union by purportedly "telling employees the Union was responsible for its decision not to implement the production incentive. More specifically, Paragraph 7 of the Consolidated Complaint states that, on or about September 23, 2015, AMP unlawfully undermined the Union when then-Chief Engineer David Brigance purportedly told employees "the Union was responsible for Respondent's decision not to implement an incentive pay program. Similarly, Paragraph 8(a) of the Consolidated Complaint states that, on or about September 23, 2015," AMP unlawfully

undermined the Union when Production Manager Brian Forehand purported told Union employees that "the Union was responsible for Respondent's decision not to implement an incentive pay program.

2. NO CREDIBLE EVIDENCE SUPPORTS THE ALLEGATION THAT RESPONDENT FAILED OR REFUSED TO BARGAIN WITH THE UNION ABOUT THE PRODUCTIVITY INCENTIVE

Contrary to the Complaint allegations noted above, no credible evidence supports the allegation that Respondent failed or refused to bargain regarding the production incentive beta test. In that regard, the facts in this case reveal that AMP and the Union actively engaged in discussions regarding AMP plan to conduct a beta test of a potential production incentive. Although there is disagreement over the dates of certain meetings, it is undisputed that Mr. Brigance met with Ms. Dogan on at least three occasions to discuss parameters of the production incentive and the beta test. It is also undisputed that that at one meeting, Mr. Brigance brought Ms. Dogan back to the production area to show her the specifics of the production incentive beta test.

Despite these efforts the Union and Ms. Dogan insist that AMP never responded to her questions about the test, never explained the production incentive, and then never informed her that the Company had started the incentive program and later stopped it. The facts in this case, however, simply do not support these allegations. In that regard, Respondent submits that the Union's allegations regarding the production incentive beta test stem directly from Ms. Dogan's inexcusable misunderstanding regarding the beta test – which Mr. Brigance described to her in the initial July 20, 2015 e-mail.

In that regard, the communications from Mr. Brigance to Ms. Dogan – both written and verbal – show unequivocally that AMP wanted to conduct a test of a potential production incentive.

Moreover, these communications show that AMP never proposed or even considered implementing a production incentive because the test failed.

Yet, Ms. Dogan's hearing testimony reveals that, even though Mr. Brigance expressly stated the Company planned to run a beta test of a potential incentive program and the fact that he specifically stated they planned to run the test on only one machine involving just 5 employees from the entire production plant – Ms. Dogan erroneously believed AMP was implementing a plant-wide production incentive.

To that point, Ms. Dogan never understood AMP was only testing a potential program to determine whether it a broader incentive program would work. For example, on direct examination Mr. Hearne specifically asked Ms. Dogan what she discussed with Mr. Brigance about the incentive program when setting up the August 6 meeting to review the equipment. Ms. Dogan answered, "Really, nothing. It was just a test run and the installation of equipment" (Tr. 291 Dogan). Ms. Dogan's answer to that question – claiming that her discussion that day with Mr. Brigance covered "nothing . . . just a test run and the installation of equipment" is astonishing.

What Mr. Brigance told her at that meeting was not "nothing," as she claimed – rather, it was the beta test. He was not describing "just a test run," as she claimed – rather, Mr. Brigance explained to her the beta test of the production incentive program. Mr. Brigance was not describing "just the installation of equipment," as she claimed – rather, Mr. Brigance explained to her how the new counter interface equipment using visual stimulus would help the employees track their individual efficiency as they worked work toward achieving the incentive.

In other words, contrary to Union's allegations, *Mr. Brigance did in fact respond to Ms. Dogan's July 21st email*. In that regard, Mr. Brigance explained to her the production incentive, and the specifics of the beta test, as well as about new the interface equipment. In fact, Mr.

Brigance even attempted to show her the equipment and demonstrate the beta test. Contrary to the Union's claim that failed and refused to discuss the production incentive, the facts undeniably establish that AMP did respond. However, the facts also establish that Ms. Dogan blew off the Company's response as "Really nothing."

Moreover, in her hearing testimony, Ms. Dogan describing the tour Mr. Brigance provided her of the of the "beta test" site, she testified

> Well, I walked in. Normally, I go through the canteen or cafeteria. And I walked into the plant area. And, you could see the machine once you walk in. It had the screen and the counter. And I just took a look at it and said I'm familiar with those. ... They use them at my other laundries. You know, I've seen that equipment before. I've – I'm familiar with the counters, and basically that's it.

(Tr. 294 Dogan). Here again – Mr. Brigance was showing her the equipment being used for the beta test of the production incentive. Yet, she was barely interested. [43]

Thus, contrary to the Complaint allegation that AMP failed and refused to bargain regarding the production incentive, the record establishes that Respondent attempted to discuss the beta test with the Union and was very open about testing a potential incentive, how the test would work, and ultimately the results of the test. The Union simply wasn't paying attention

[43] In stark contrast, Mr. Brigance testified that he Ms. Dogan together with then-Union President Harvey Streater into the production area to view Napkin Ironer No. 2 and the equipment being used for the beta test. According to Mr. Brigance, he again explained to them how the incentive pay would work – using Napkin Ironer No. 2 as the example. He also showed them how the new interface between the lights and the unit counter would help the feeders increase their productivity and efficiency on the napkin ironer (Tr. 1107 Brigance).

3. NO EVIDENCE SUPPORTS THE ALLEGATION THAT RESPONDENT TOLD EMPLOYEES THE UNION WAS RESPONSIBLE FOR ITS DECISION NOT TO IMPLEMENT A PRODUCTION INCENTIVE

No credible evidence supports the allegation that Brian Forehand or any other manager or supervisor of respondent ever told any employee that the union was responsible for the Company's decision not to implement a production incentive.

In support of the allegation that AMP caused employee disaffection by telling employees the Union was responsible for its decision not to implement the production incentive program, the General Counsel relied upon a series text messages between Ms. Dogan and then-Union President Harvey Streater dated September 23, 2015 (Tr. 311 Dogan; GC-32). The text conversation reads:

FROM MR. STREATER:	Did you tell Brian not give full time workers no production ($8/day) pay for meeting production.
FROM MS. DOGAN:	No. Brian needs to put in writing his plan. We need to make sure they are doing it right.
FROM MR. STREATER:	They are claiming to the whole plant that u stop production pay.
FROM MS. DOGAN:	He lying and tell him I said so.
FROM MR. STREATER:	Dave told me that when u were here last u said temps shouldn't get production pay so he figured if temps can't get it then neither should full timers. That has the whole plant pissed.

On its face, however, this text exchange does not support the allegation that Brian Forehand or any other AMP manager or supervisor blamed the Union for anything. For example, the specific text from Mr. Streater that states "They are claiming to the whole plant that u stop production pay" does not identify who "They" refers to – but reading the entire text exchange it is not likely a reference to Brian Forehand. Both the first and second texts refer specifically to "Brian" – then Mr. Streater says "They are claiming." If it were Brian, it would make more sense in light of the text exchange as a whole for him to either refer to "Brian" or "He."

To that point, Mr. Streater's hearing testimony clarifies the reference. According to his testimony, when he said "They are claiming to the whole plant that u stop production pay." he was essentially saying that everybody in production was upset because they thought she stopped production pay – i.e. "They" referred to all production workers (T. 635 Streater).

Moreover, when Ms. Dogan and Mr. Streater subsequently met with Mr. Forehand and Mr. Lauderdale to talk about the texts on September 24, 2015, both Forehand and Lauderdale denied blaming the union for the decision not implement a production incentive (Tr. 319 Dogan). Then after the meeting, they allowed Ms. Dogan to remain at the facility after their meeting so that she could meet with Union leaders Norma Morgan and Mr. Streater to discuss making sure the employees knew the union was not to blame (Tr. 319 Dogan). Ms. Dogan further testified that, after this meeting on September 24, 2015, she had no further discussions with any AMP manager or supervisor regarding the production incentive (Tr. 321 Dogan).

In light of the foregoing, there is simply no credible evidence that Mr. Forehand ever blamed the Union or otherwise stated the Union was responsible for the Company's decision not to implement the production incentive.

B. GENERAL COUNSEL CANNOT ESTABLISH THAT RESPONDENT VIOLATED THE ACT WHEN IT EXTENDED THE STANDARDIZED VACATION BENEFIT TO THE MEMPHIS BARGAINING UNIT

Similar to the "beta test" allegations, the General Counsel claims that AMP violated Section 8(a)(5) of the Act when it extended vacation benefits to the bargaining unit employees in Memphis. The General Counsel further alleges that the purported unfair labor practices involving the new vacation benefit caused employee disaffection from the Union and lead directly to the Union's loss of majority status. According to the General Counsel, the purported unfair labor practices thus "tainted" the employee petition relied upon by AMP as objective evidence that the

Union lost majority support – rendering AMP's withdrawal of recognition from the Union unlawful.

With regard to the new vacation benefit, the General Counsel alleges AMP violated the Act by (1) failing and refusing to bargain with the Union about the new vacation policy[44] and then (2) by allegedly blaming the Union for purported delays in both implementing the new policy and with regard to disbursing a payment promised to certain employees intended to offset any loss in vacation time experienced under the new policy.[45]

Contrary to the Complaint allegations, the facts in this case fail to establish that AMP violated the Act in any way with regard to the standardized vacation benefit. As noted further below, the Union never requested that AMP bargain as alleged in the Complaint. Even it did, however, the facts in this case establish that AMP was under no obligation to bargain with the Union regarding the new vacation benefit.

Moreover, there is no evidence whatsoever that AMP ever blamed the Union for purported "delays" in either the disbursement of the lump-sum payment or in the implement of the vacation policy. To the contrary, the record evidence reveals that (1) AMP included the lump sum payment with the adversely impacted employees' December 11 payroll – just as it promised); and (2) AMP implemented the new vacation policy effective January 1, 2016 – just as it announced.

---

[44] Paragraph 13(a) of the Consolidated Complaint specifically states: "[a]bout September 2015, . . . the Union requested that Respondent bargain collectively about Respondent's plan to implement changes to Respondent's vacation accrual policy and pay bonuses to employees." Paragraph 13(a) further alleges that since "[a]bout September 2015 . . .Respondent has failed and refused to bargain collectively about [the vacation accrual policy and vacation pay bonuses]."

[45] Paragraph 8(b) of the Consolidated Complaint essentially alleges that AMP unlawfully undermined the Union when Production Manager Brian purportedly told employees sometime in November 2015 that "the Union was responsible for delays in Respondent's implementation of a new vacation accrual system and payment of vacation bonuses.

In light of the foregoing, the General Counsel cannot establish that AMP committed a single unfair labor practice with regard to the standardization of the vacation benefit. Moreover, there is no basis whatsoever to suggest AMP's standardization of the vacation benefit unlawfully dissuaded employee support for the Union or otherwise tainted the employee petition relied upon by AMP to withdraw recognition.

1. AMP WAS UNDER NO OBLIGATION TO BARGAIN ABOUT THE STANDARDIZED VACATION BENEFIT

There is no factual support or legal basis for the assertion in Complaint Paragraph 13 that AMP unlawfully "failed and refused" to bargain regarding the new vacation benefit. First, the Union never requested that AMP bargain regarding the vacation benefit. In that regard, record evidence contains no document from the Union requesting that AMP bargain about the vacation benefit nor is there any testimonial evidence that the Union made such a request. The allegation in Complaint Paragraph 13, therefore, is false.

Even if the Union had requested that the Company bargain, however, AMP was under no obligation to bargain regarding the new vacation benefit.

Although Section 8(a)(5) of the Act requires that an employer bargain with the employees' certified bargaining representative over changes to the employee's wages, hours, and other terms and conditions of employment (which would include vacation benefits), that obligation can be modified by the terms of the parties' collective bargaining agreement. In this case, there are two such provision relevant to the allegations against AMP contained in the Consolidate Complaint.

The first relevant provision is the Scope of Agreement Clause contained under Article XIII of the most recent collective bargaining agreement, which states:

ARTICLE XXIII. SCOPE OF AGREEMENT

Section 1. Complete Agreement. It is agreed that this written contract reflects the entire agreement between the parties. Amendments or clarifications of this Agreement, mutually

> agreed upon, shall be reduced to writing attached to, and shall become a part of, this contract.
>
> Section 2. Negotiations. The parties acknowledge that during the negotiations which, resulted in this Agreement, each has unrestricted right and opportunity to present demands and proposals with respect to any matter subject to collective bargaining. Therefore, the Company and the Union freely agree that during the period of this Agreement, neither party shall be obligated to bargain with respect to any matter or subject not covered or referred to in this Agreement, nor with respect to any matter or subject referred to in this Agreement, except in the matter specified herein.

(GC-2 p.25).

Under normal circumstances, the insistence of either the employer or the union to bargain in the middle of a contract term regarding a subject encompassed by a contractual Scope of Agreement clause like the one at issue here, would likely constitute a violation of both the bargaining agreement at issue as well as NLRA. Thus, based on Article 2, neither AMP or the Union would have the right during the term of the to insist on bargaining over a new benefit already covered under the agreement; nor could AMP unilaterally implement such a benefit.

Applying the Scope of Agreement Clause in Article 23 to the subject of vacation benefits (which is specifically covered under Article 12 of the Agreement), the pertinent part of Article 23, Section 2 states, "neither party shall be obligated to bargain with respect to any matter or subject referred to in this Agreement, except in the matter specified herein." (GC-2 p.25). In other words, because Article 12 of the then-existing collective bargaining agreement contained a vacation accrual schedule, Article 23, Section states that neither party could insist on bargaining over a new vacation benefit during the term of the contract. More precisely, under this provision, neither AMP or the Union could be compelled to bargain over a new (vacation) benefit during the term of the contract.[46]

[46] In that regard, the record evidence shows that all the events related to AMP's announcement of the new benefit on September 29, 2015 and AMP's implementation of the new vacation benefit on January 1, 2016 occurred during the term of the then-existing collective bargaining and

However, the Collective Bargaining Agreement that covered the Memphis bargaining unit employees at that time contained a distinctive "me too" provision regarding vacation benefits that, under certain circumstances, effectively carved out a unique exception to the Scope of Agreement clause with regard to vacation benefits. In that regard, Article XII stated:

> If the Company improves vacation benefits during the term of the Agreement for other employees at the Memphis operation, *such improvements shall also apply to bargaining unit employees*.

(Tr. 1269 Morehead; GC-2).

Under the plain language of this provision, if AMP improved the vacation benefits for the non-union employees at the Memphis facility anytime during the term of the collective bargaining agreement, those benefits "shall" also apply to the bargaining unit employees. The language did not extend an invitation to bargain about the vacation benefits – the Scope of Agreement Clause precluded such bargaining. However, in the event AMP improved the vacation benefit for the non-union employees in Memphis, the Company was obligated to extend the vacation benefit to the bargain unit employees as well. On the other hand, if changes to the non-union vacation benefits did not constitute and improvement, the bargaining unit employees were not entitled to changes, and AMP was not obligated to extend them to the bargaining unit.

Notably, in the instant case – AMP would not be obligated to bargain about the vacation benefit regardless of whether it was considered an improvement. In that regard, if the new benefit constituted an improvement the bargaining unit members were entitled to it – the parties did not bargain over the benefit and AMP could not insist on any "quid pro quo" for providing. If the vacation benefit was not an improvement – the Scope of Agreement Clause precluded either side

---

(aside from incorporating the implement benefit language into the contract) and were not the subject of the parties 2016 contract negotiations.

from insisting on bargaining.

As the instant case demonstrates, whether or not a particular change constituted an improvement is not always obvious and may then depend on the parties' subjective interpretation of the change. Although the "me too" language in Article XII provides no guidance for situations where the parties disagree on that issue, common sense strongly suggests the subjective interpretation of the Union should control. If the Union did not believe a particular change constituted an improvement, the bargaining unit members should not be forced to accept it – nor should AMP be obligated to provide it the benefit.[47] In this regard, the subjective interpretation is technically is not a situation where the Union accepts or rejects a proposal – rather the subjective interpretation is whether the Union agrees that the change constitutes an improvement.

With regard to the case hand, from the outset AMP considered the standardized vacation benefit as an improvement over the vacation benefits provided under Article XII of the CBA. As such, AMP believed the bargaining unit members were entitle to the new benefit and the Company was obligated under Article XII to provide it to them. Hence, on September 29, 2015, AMP essentially informed the Union "we are providing an improved vacation benefit to our non-union employees and therefore bargaining unit members get it too."

Although the Union had questions about the benefit, Mr. Lauderdale provided the answers and explanations in both his initial e-mail response to Ms. Dogan on September 30, 2015 and again during the face-face meeting held at the plant on November 4, 2015. Even after answering the Union's questions, AMP continued to proceed as though the new vacation constituted an

[47] Alternatively, if the Union believed a change was an improvement and AMP did not, the issue would like be subject to arbitration. However, that is not the situation here.

improvement, believing the Union did too.[48] AMP remained unaware that the Union apparently disagreed with its assessment until Mr. Morehead received the November 13, 2015 from Mr. Raynor where, for the first time, the Union clearly indicated it did not agree that the vacation change constituted a benefit.

Notwithstanding the angry tone of Mr. Raynor's letter, Morehead's November 30, 2015 response essentially indicates that AMP still believe the change constituted an improvement and indicated the Company's willingness to discuss that answer any questions the Union might have. However, knowing at that point that the Union did not agree the vacation change constituted an improvement, AMP could not proceed to implement as it had announced. Apparently, the Union did not like that either.

In any event, the entire situation became a non-issue only a few days later when Mr. Lauderdale resolved the Union's remaining questions and concerns about the new accrual. Then, on December 4, 2015, Mr. Raynor indicated the Union "accepted." the new vacation benefit.

Notably, AmeriPride did not make a single change or adjustment to the standardized vacation benefit based on the objections raised by the Union (Tr. 1305 Morehead). In fact, once Mr. Lauderdale and Mr. Morehead clarified Mr. Raynor's concerns regarding the new accrual schedule and the lump-sum payments designed to off-set any adverse impact, the Union "accepted" standardized vacation benefit exactly as AMP had designed and announced to the production employees on September 29, 2015 (Tr. 1305 Morehead. By "accepting" the vacation benefit, the Union ultimately agreed with the Company's initial position that the standardized

[48] From the Employer's perspective, the November 4 meeting regarding the vacation benefit involved answering additional questions from the Union about the new accrual system. Thus, as noted above, Ms. Dogan's false narrative about raising complaints and objections during that meeting makes no sense. If she had, there would be no reason for AMP to insist the changes were a benefit, if the Union did not.

vacation benefit constituted an improvement.

In other words, the Union ultimately agreed with AMP's initial assessment – i.e., that the new vacation benefit constituted an improvement. As such, the bargaining unit employees were entitled to the benefit under the "me too."

Although the issue became somewhat moot in light of the parties' ultimate agreement, he bottom line is that AMP was not obligated to bargain with the Union about the change to the vacation benefit. Therefore, the Complaint allegation that AMP unlawfully failed and refused to bargain is untrue and should be dismissed.

2. NO CREDIBLE EVIDENCE SUPPORTS THE ALLEGATION THAT RESPONDENT TOLD EMPLOYEES THE UNION WAS RESPONSIBLE FOR DELAYS

No credible evidence supports the allegation in Paragraph 8(b) of the Consolidated Complaint that "sometime in November 2015" Production Manager Brian Forehand told employees "the Union was responsible for delays in Respondent's implementation of a new vacation accrual system and payment of vacation bonuses."

In that regard, Brian Forehand denied ever making any type of statement to employees "blaming" the Union for purported delays in either the implementation of the new vacation benefit or the lump sum payment to the adversely affected employees. Moreover – and perhaps most importantly – neither the lump sum payment or implementation of the vacation benefit were delayed. As a result, neither Brian Forehand nor any other AMP manager or supervisor ever communicated anything to employees suggesting that either the payment or implementation would be delayed – there was never any reason to make such a statement. Likewise, there would be no reason whatsoever for Brian Forehand or any other AMP manager or supervisor to blame the Union for delays – especially since nothing was delayed.

C. NO FACTS SUPPORT ALLEGATIONS THAT AMP UNLAWFULLY CHANGED ITS "SHIFT TRANSFER POLICY"

Paragraph 14 of the Consolidated Complaint essentially alleges that AMP "changed its policy regarding shift transfers" and then "transferred an employee from first shift to second shift" without providing the Union notice or opportunity to bargain regarding the purported change or the effects of the change. Apparently, Counsel for the General Counsel contends the alleged failure to bargain and purported unilateral change discouraged support for the Union and therefore tainted the employee petition relied upon by AMP to withdraw recognition.

Once again, however, the Complaint allegations completely misstate the facts. Moreover, the record evidence in no way support allegations that AMP unlawfully changed its shift change policy or otherwise acted to undermine employee support for the Union.

D. THE GENERAL COUNSEL CANNOT ESTABLISH THAT AMP SOLICITED EMPLOYEES TO SIGN THE EMPLOYEE PETITION

Paragraph 8(c) of the Consolidated Complaint alleges that on two occasions on November 14, 2015, Production Manager Brian Forehand "solicited the decertification of the Union by asking employees to sign a petition to decertify the Union." However, no credible evidence supports the Complaint allegation that Brian Forehand (or any other AMP manager) ever solicited employees to sign the petition.

1. THE ALLEGED SOLICITATION OF EMPLOYEE SIGNATURES BY BRIAN FOREHAND

The allegation of unlawful solicitation is based solely on the uncorroborated and highly questionable testimony of employee Lucretia Lewis. In that regard, Ms. Lewis testified that while working in the Garment Room on the morning of Saturday, November 14, 2015, Stock Room supervisor Natasha Malone received a call from Production Manager. Forehand on her cell phone

(Tr. 823-24 Lewis). Over a hearsay objection from Respondent's Counsel, Ms. Lewis then testified that when Ms. Malone got off the phone, she said to both Ms. Lewis and Ms. Isom "Brain wanted to know if you wanted to sign the petition." (Tr. 824, 831 Lewis). According to Ms. Lewis, she responded, "Why would I want to sign the petition when the Union has not done anything to me?" (Tr. 824-25 Lewis).

Ms. Lewis further testified that, about 10-15 minutes later, Mr. Forehand entered the garment room.[49] Although she couldn't remember who started the conversation, Ms. Lewis claims at some point they all began talking about the things they didn't like about the Union. (Tr. 830-831 Lewis). According to Ms. Lewis it was during this conversation that Mr. Forehand allegedly stated "if you don't like the Union, you could sign the petition to get the Union out." (Tr. 829, 832 Lewis).

2. THE SOLICITATION ALLEGATION IN PARAGRAPH 8(C) IS BASED ON SOLELY ON FALSE AND UNRELIABLE TESTIMONY AND SHOULD THEREFORE BE DISMISSED

As noted above, the testimony of employee Lucretia Lewis was the only evidence proffered by the General Counsel at the hearing to prove the allegation that AMP unlawfully solicited employee signatures for the petition. However, AMP directly contradicted Ms. Lewis' non-corroborated testimony through testimonial and documentary evidence. Ms. Lewis's testimony, therefore, was not believable and should not be credited. Accordingly, Paragraph 8(c) should be dismissed because the General Counsel failed to establish that AMP unlawfully solicited employee signatures on the petition.

[49] It is undisputed that, as the Production Supervisor, Mr. Forehand would typically come up to the stockroom at least once during the course of each shift to check on the employees and to make sure everything was running smoothly.

a. THE TESTIMONY OF LUCRETIA LEWIS WAS NOT CREDIBLE

Ms. Lewis' testimony about the purported events on November 15, 2015 and the alleged unlawful solicitation by Brian Forehand was not credible and should be rejected in its entirety.[50] At the outset, it is important to note Ms. Lewis' reluctance to testify for the General Counsel. Although subpoenaed, Ms. Lewis initially refused to appear, but later testified under threat of subpoena enforcement. To that end, Counsel for the General Counsel was permitted to call Ms. Lewis to testify after Respondent had begun its case-in-chief.

When Ms. Lewis finally testified, however, her testimony was vague, confusing, and simply not credible. An examination of the record reveals that much her testimony came in response to leading questions posed by either Counsel for the General Counsel or by Judge Sandron as they attempted to clarify her previous incoherent and confusing answers. In fact, Ms. Lewis' testimony was so confusing on some matters that it is virtually impossible to discern whether she was involved in two conversations that morning about the petition or one longer conversation; whether or not she and Ms. Isom were working when Mr. Forehand came into the Garment room; or – most importantly – what was said and by whom during the purported discussion about the Union. The record is even unclear as to who participated in the purported conversation involving Mr. Forehand, because Ms. Lewis failed to no as to whether Ms. Isom or Ms. Malone were present.

Moreover, Ms. Lewis' recollection of events was highly questionable. She repeatedly stated she could not remember certain facts because the events occurred so long ago (Tr. 828, 830, 832 Lewis). In that regard, Ms. Lewis could not recall critical details such as who initiated the

[50] Even if the Judge credits Ms. Lewis' testimony, saying to an employee "if you don't like the Union you could sign the petition" hardly constitutes solicitation of employee signatures. Thus, unlawful solicitation allegation in Paragraph 8(c) fails, even considering Ms. Lewis' testimony.

alleged conversation with Mr. Forehand; nor could she recall the first topic they discussed (Tr. 828 Lewis). Yet, despite significant problems with her recollection of the details of the conversation, Ms. Lewis was nevertheless able to recall what Mr. Forehand purportedly said to her – even though she provided absolutely no testimony about what anyone else may have said during this alleged discussion.

Ms. Lewis' poor recollection and lack of clarity cannot be dismissed as involving only minor details. Rather, they concern important facts necessary to establish the foundation and substance for the purported conversation in which Mr. Forehand allegedly solicited signatures for the employee petition. Thus, although the totality of Ms. Lewis' testimony is highly suspect, her specific testimony suggesting that Mr. Forehand solicited signatures for the employee petition is inherently unbelievable.

Moreover, the General Counsel could have called co-worker Rhonda Isom to testify in support of Ms. Lewis's testimony – but did not. If Ms. Isom was present during these alleged conversations (as Ms. Lewis claims), her testimony might have corroborated Ms. Lewis' story. In that regard, the General Counsel's failure to subpoena Ms. Isom creates an inference that her testimony would not have supported Ms. Lewis's version of events. On that point, it is well-settled that the failure to call a potential witness who could corroborate the testimony of another creates a negative presumption against the testimony in question. *See Continental Can Co.,* 148 NLRB 640, 644 (1964) (Board affirmed Trial Examiner's finding that the General Counsel's failure to call an available witness to corroborate testimony gives rise to an inference that, if called, the testimony of the potential witness would have been adverse).

b. RESPONDENT DID NOT ENGAGE IN UNLAWFUL SOLICITATION

Not only was Ms. Lewis' uncorroborated testimony about the alleged solicitation of signatures inherently unbelievable, it was entirely contradicted by credible testimonial and documentary evidence – that disproves the allegations of unlawful solicitation. In that regard, the testimony of both Brian Forehand and Natasha Malone completely contradict the narrative concocted by Ms. Lewis.

1. THE TESTIMONY OF BRIAN FOREHAND

Mr. Forehand expressly denies soliciting signatures for the employee petition – from Ms. Lewis or any other employee. In that regard, Mr. Forehand specifically testified that neither the alleged conversation with employees in the Garment Room nor the purported phone to call to Ms. Malone ever occurred (Tr. 1651-52 Forehand).

Mr. Forehand admitted coming in to work at approximately 10:30 a.m. on Saturday, November 14, 2015 to check on the work being done that morning (Tr. 1640 Forehand). While he was at the plant, Mr. Forehand went to the Stock Room to speak with Natasha Malone to get an update regarding their work progress (Tr. 1641, 1651 Forehand). When Mr. Forehand entered the stock room, he went directly to Ms. Malone and did not interact with the other employees (Tr. 1650-51 Forehand). Notably, Mr. Forehand denies engaging in any conversation with the either Ms. Lewis or Ms. Isom about the petition, the union, or anything else that morning (Tr. 1650-51 Forehand). Rather, Mr. Forehand came into the Stock Room, spoke directly with Stock Room Supervisor Natasha Malone for a few minutes about the work they were doing that morning, and then left (Tr. 1650-51 Forehand). Mr. Forehand also testified that he did not call Ms. Malone that

morning or at any other time to inquire about employee signatures on the petition (Tr. 1652 Forehand).

2. THE TESTIMONY OF NATASHA MALONE

Stock Room Supervisor Natasha Malone also testified about the events of November 14, 2015 – and completely contradicted the testimony of Lucretia Lewis.

Ms. Malone testified that sometime that morning she had brief conversation with Ms. Lewis and Ms. Isom about the employee petition to the remove the union (Tr. 1057-58). According to Ms. Malone, "We were just gossiping in general, and I believe – I can't remember which one – somebody brought up the Union. And I just said, even if I could sign it [the petition], I don't want to be involved." (Tr. 1059 Malone).[51]

A few minutes later, Mr. Forehand came to the stock room to "check up on them." (Tr. 1061 Malone). According to Ms. Malone, Mr. Forehand said "Good morning" and then basically asked about their workday (Tr. 1061-63 Malone). During this brief conversation, Mr. Forehand did not say anything to them about the employee petition, nor did he ask Ms. Lewis about signing the petition (Tr. 1062-63).

Thus, Ms. Malone's testimony fully corroborates Mr. Forehand's version of the events on November 14, 2015. They both testified that Mr. Forehand came into the Stock Room that morning and had a general discussion with her about the work they were doing than morning. During this conversation, Mr. Forehand did not even mention the employee petition, let alone encourage employees to sign the petition.

Ms. Malone also testified that she did not receive any phone calls from Mr. Forehand that morning at work (Tr. 1055, 1063-64 Malone)

---

[51] Ms. Malone understood that, as a supervisor, she could not sign the employee petition (Tr. 1059 Malone).

3. DOCUMENTARY EVIDENCE PROVES THE ALLEGED PHONE CALL FROM MR. FOREHAND TO MS. MALONE NEVER HAPPENED

As noted above, both Mr. Forehand and Ms. Malone testified regarding the alleged phone call in which Mr. Forehand supposedly solicited employees to sign the employee petition. To that end, Mr. Forehand denied ever making such a call and Ms. Malone denied ever receiving such a call.

In addition to this witness testimony, Mr. Forehand's cell phone records for November 2015 verify that the alleged phone call to Ms. Malone never happened (R-36). In that regard, the monthly AT&T invoice for Mr. Forehand's cell phone catalogues the date, time, and telephone number of each call made from Mr. Forehand's phone during that particular monthly billing cycle (R-36). Notably, Mr. Forehand's invoice for November 2015 reflects that no calls were made from Mr. Forehand's phone to Ms. Malone's number on November 14, 2015 (R-36 p.4). The November 2015 cell phone records not only substantiate the testimony of both Mr. Forehand and Ms. Malone, they provide unequivocal proof that Ms. Lewis falsified her testimony about the events of November 14, 2015.

Accordingly, Respondent submits that the testimony of Ms. Lewis is completely untrustworthy and should not be credited. Moreover, because the falsified testimony of Ms. Lewis is the only evidence presented by the General Counsel regarding the alleged solicitation by Mr. Forehand, the corresponding allegation in Complaint Paragraph 8(c) necessarily fails.

In light of the foregoing, the General Counsel failed to offer any credible evidence whatsoever to establish that Mr. Forehand (or any other AMP manager or supervisor) "solicited the decertification of the Union by asking employees to sign a petition to decertify the Union," as

alleged in Paragraph 8(c) of the Consolidated Complaint. Thus, because the General Counsel cannot sustain its burden proof on this allegation, Paragraph 8(c) should be dismissed.

E. NO FACTS SUPPORT THE ALLEGATION THAT AMP TOLD EMPLOYEES THE UNION WAS RESPONSIBLE FOR RESPONDENT'S PURPORTED "FAILURE" TO OFFER WAGE INCREASES

Paragraph 8(d) of the Consolidated Complaint alleges that, on November 14, 2015, AMP undermined the Union when Production Supervisor Brian Forehand told employees "the Union was responsible for Respondent's [purported] failure to provide wages increases to employees." There is absolutely no record evidence whatsoever that Mr. Forehand or any other AmeriPride manager or supervisor ever blamed the Union for the Company's purported "failure" to offer wage increases. In that regard, Mr. Forehand expressly denied that he made any such statement to employees (Tr. 1717 Forehand).

Moreover, it would have been completely illogical for Mr. Forehand make any reference to wage offers in November 2015. Bargaining unit wages were governed by the collective bargaining agreement – and there were no upcoming wage increases under the contract. Furthermore, even though the then-existing bargaining agreement was due to expire on January 15, 2016 – as of November 15, 2015, the parties had not yet begun negotiations for a successor contract and there had no discussions whatsoever with the Union about wages (Tr. 1717-18 Forehand). In other words, Mr. Forehand would have absolutely no reason to make any statement to employees about wage offers at that time. In fact, any such reference in November 2015 would make no sense to bargaining unit employees.

Again, the General Counsel proffered no evidence whatsoever to prove that Mr. Forehand or any other manager or supervisor of Respondent "blamed the Union" for purportedly "not proposing" wage increases. Thus, the General Counsel failed in its burden to prove the allegation

set forth in Paragraph 8(d) of the Consolidated Complaint. Paragraph 8(c), therefore, must be dismissed.

F. THE GENERAL COUNSEL CANNOT ESTABLISH THAT AMP SOLICITED THE DECERTIFICATION BY ASKING EMPLOYEES REVOKE SIGNED UNION MEMBERSHIP CARDS

Paragraph 8(e) of the Consolidated Complaint alleges that on January 15, 2016, Production Supervisor Brian Forehand "solicited the decertification of the Union by asking employees to revoke their signed Union dues check-off cards.

The allegation in Paragraph 8(e) apparently stems from the decision of former production employee Sheila Wright to revoke her Union Membership Card. Contrary to Paragraph 8(e), there is no evidence whatsoever to support the allegation that Mr. Forehand solicited her to revoke her card. Rather, uncontroverted evidence indicates that Ms. Wright revoked her Union Membership Card because she was never told what the card was for, and had no idea signing the card allowed the Union to deduct dues from her paycheck. Nothing in the record suggests that Mr. Forehand ever asked or encouraged Ms. Wright to revoke her Card.

1. THE OPERATIVE FACTS REGARDING THE REVOCATION OF MS. WRIGHT'S UNION MEMBERSHIP CARD

Ms. Wright signed the Employee Petition to remove the Union on November 12, 2015 (R-11). Ms. Wright subsequently signed a Union Membership Card on January 13, 2016 (GC-36 p.3). On January 15, 2016, Ms. Wright contacted the union and revoked her signature on the Union Membership Card. Later that same day, the Union instructed AMP not to process Ms. Wright's Membership.

Apparently, the General Counsel contends that Production Manager Brian Forehand asked Ms. Wright to revoke her Union Membership in order to preserve the validity of her signature on

the Employee Petition to remove the Union. Contrary to the allegations in Complaint Paragraph 8(e) there is no evidence whatsoever that Mr. Forehand solicited Ms. Wright.

At approximately 1:00 p.m. on January 15, 2016, Mr. Forehand overheard someone in the women's restroom crying (Tr. 1708-09 Forehand). A few minutes later, production employee Sheila Wright exited the restroom. According to Mr. Forehand, she looked "rather worked up, very upset." (Tr. 1709 Forehand). After exiting the restroom, Ms. Wright immediately walked over to Mr. Forehand and said that one of the other ladies [in production] told her that a card she signed allowed the union to take dues money out of her paycheck (Tr. 1709-10 Forehand). Nearly in tears, Ms. Wright said that she had made a mistake. She didn't know what the card was for and didn't know what she was signing (Tr. 1709-10). Mr. Wright repeated that she couldn't afford to have dues taken out of her pay and asked Forehand what she should do (Tr. 1710 Forehand). Mr. Forehand told her to talk with Ricky Lauderdale stating, "he could be the liaison between her and the Union to see about resolving the issue (Tr. 1711 Forehand).

Ms. Wright then went to see Ricky Lauderdale (Tr. 1837 Lauderdale). According to Mr. Lauderdale, "she stated she signed a card, but that she didn't know what the card was [for], and she now understands that they're for union dues and [dues] will now be deducted from her check. She could not afford anything to come out of her paycheck. And, she actually repeated that she just can't afford it, probably three or four [more] times after that." (Tr. 1837 Lauderdale).

Mr. Lauderdale tried to get her to calm down, but she was very upset and repeated several times that she couldn't afford to have anything taken out of her check (Tr. 1839). Mr. Lauderdale printed out a copy of Ms. Wright's Membership Card and reviewed the language regarding union

dues (Tr. 1839 Lauderdale).[52] After they reviewed the card, Mr. Lauderdale advised her to call Sheila Dogan (Tr. 1839 Lauderdale).

During a telephone conversation with Ms. Dogan later that afternoon, Mr. Lauderdale informed her about the situation involving Sheila Wright (Tr. 1844 Lauderdale). Essentially, he informed Ms. Dogan that Sheila Wright had come to his office very upset that she had signed a union card because she could not afford to pay dues (Tr. 1844).

They spoke again a few hours later (Tr. 1845 Lauderdale). During this conversation, Ms. Dogan told Lauderdale not to process Ms. Wright's Membership Card:

> Q: [BY MR. BOWEN] And what was said, and by whom, during this call?
>
> A: [BY MR. LAUDERDALE] She said that she had spoken with Sheila Wright and to not process the card. And then she asked if I gave her a copy of the card, and I said, yes, I did. And she -- and that's when she went into, well, is that your normal practice? And I said, if an employee comes to me, that I would provide them a card if they're asking questions about it, because that's the only way I can refer to it.
>
> And she said -- basically, that was the end of the conversation. And I told her that I would, you know, I had already put in the deduction for those employees, that I told her that I would take that deduction away.

(Tr. 1845 Lauderdale). In a subsequent e-mail later that afternoon, Mr. Lauderdale confirmed that AMP should not process Sheila Wright's Membership Card (Tr. 1848-49 Lauderdale).

2. RESPONDENT DID NOT SOLICIT SHEILA WRIGHT TO REVOKE HER CARD

There is no evidence whatsoever that Respondent solicited Sheila Wright to withdraw or otherwise revoke her Union Membership Card. To the contrary, it is undisputed that Ms. Wright

[52] Ms. Dogan had already e-mailed a copy of her card to Mr. Lauderdale for processing (Tr. 1890-91 Lauderdale; GC-36).

revoked her signature and demanded that the Union return the membership card when she subsequently learned that dues would be removed from her paycheck.

Essentially, the s the General Counsel's supposed "evidence" in support of this allegation is composed of two facts: (1) on January 15, 2015, an employee saw Ms. Wright talking with Mr. Forehand in the production area and Mr. Wright looked upset; and (2) Ms. Wright subsequently contacted the Union and revoked her membership card. However, this "evidence" in no way supports the claim that Respondent solicited Ms. Wright to revoke her signature. To that point, Brian Forehand provided the only testimony – and only record evidence – of the full conversation he had with Ms. Wright. During this brief conversation, he never encouraged or asked Ms. Wright to withdraw or revoke her Union Membership Card (Tr. 1711 Forehand).

In light of the foregoing, the General Counsel cannot establish any of facts showing that Respondent solicited any employee to revoke their Union membership.

G. THE GENERAL COUNSEL CANNOT ESTABLISH THAT AMP ENGAGED IN BAD FAITH BARGAINING DURING CONTRACT NEGOTIATIONS WITH THE UNION

Paragraph 15 of the Complaint essentially alleges that Respondent engaged in bad-faith bargaining by: (1) unreasonably delaying the January 6, 2016 bargaining session with the Union; and (2) making regressive and unreasonable bargaining proposals.

The facts in this case do not support the allegation that Respondent unreasonably delayed the January 6 bargaining session. Likewise, there is no basis whatsoever for the Complaint allegation that Respondent submitted regressive or unreasonable bargaining proposals. Accordingly, the allegations in Complaint Paragraph 15 are completely meritless and should be dismissed.

1. RESPONDENT DID NOT DELAY THE JANUARY 6 BARGAINING SESSION

Contrary to the Complaint allegations, Respondent did not unreasonably delay the January 6th bargaining session. While it is true that Mr. Morehead and Ms. Dogan met prior to the bargaining session to conclude the step-three grievance meeting for the so-called "shift-change" grievance, they did so at the suggestion of Ms. Dogan.

The relevant facts on this issue establish that Mr. Morehead had sent an e-mail to Ms. Dogan on December 29, 2015, suggesting they hold the Step 3 meeting on the "Boddie grievance" either later that day or on the following Monday, January 4, 2016 (GC-34). In response, Ms. Dogan indicated she had been in accident as was out of town and would not be able to meet (Tr.1327-28 Morehead; GC-34). Then, Ms. Dogan expressly states: Since we are scheduled for negotiations next week and Harris [Raynor] will be here we can discuss then." (GC-34). Based on Ms. Dogan's December 29, 2015 e-mail, Mr. Morehead logically thought they would discuss the grievance that morning before bargaining *because that's what Ms. Dogan said in her e-mail*.[53]

---

[53] Respondent contends that Ms. Dogan's testimony about the step-three meeting with Kenny Morehead is simply false. Ms. Dogan claims Mr. Morehead called her into his office and insisted they discuss the "shift transfer" grievance that morning – stating that it was "company policy" to close all grievances before entering negotiations (Tr. 359 Dogan). According to Ms. Dogan, she pleaded that she was not prepared to talk about the grievance that morning because she hadn't brought the file or any other paperwork (Tr. 360 Dogan). She also testified to saying that she hadn't yet requested any information about the grievance, which he knew was her "normal practice." (Tr. 361 Dogan). Nevertheless, Mr. Morehead refused to negotiate until they had discussed the grievance (Tr. 361 Dogan).

Like much of Ms. Dogan's testimony, however, her narrative about the grievance meeting on the morning of January 6 is a complete fiction. In that regard, Mr. Morehead expressly denied that he told Ms. Dogan it was Company policy not to proceed with bargaining when there are outstanding grievances (Tr.1327-28 Morehead). He also denied insisting that that they deal with the so-called "Boddie grievance prior to bargaining (Tr. 1328 Morehead). Nor did he refuse to bargain until he and Ms. Dogan met regarding the grievance (Tr. 1328 Morehead).

Moreover, since she had initially suggested they meet, it makes no sense that she would be so completely unprepared to discuss the grievance. Nor should it have come as a surprise that Mr. Morehead thought they would discuss the grievance that morning.

Accordingly, when Ms. Dogan arrived at the plant on the morning of January 6, 2015 for negotiations, she and Mr. Morehead met for approximately 30-45 minutes regarding the grievance. Apparently, Mr. Raynor did not know that Ms. Dogan had agreed to meet with Mr. Morehead that morning about the grievance and was upset that they had not started bargaining. Therefore, at about 10:15 or so they wrapped up the Step-Three grievance meeting and went to the conference room to commence bargaining. Thereafter, the parties sat down to bargain between 10:45 – 11:00 a.m.

Thus, despite the fact that Morehead and Dogan met for approximately an hour on the morning of January 6 to discuss the grievance it did not unreasonably delay the bargaining. In that regard, in an e-mail to Mr. Morehead on December 29, 2015, Mr. Raynor states, "I will need a little more time with [the bargaining committee] in the morning. I anticipate meeting the committee at 9:30 a.m. Can we start with you guys about 10:30?" (GC-16). This e-mail shows that Mr. Raynor did not expect to begin bargaining that morning until "about 10:30." Moreover, despite meeting with Ms. Dogan briefly before bargaining that morning to discuss the grievance, the stop-three meeting had concluded and the bargaining session began before 11:00 a.m.

Thus, there is no basis to any claim that Respondent unreasonably delayed bargaining. In that regard, Ms. Dogan proposed the pre-bargaining grievance meeting – not Mr. Morehead. Moreover, the grievance meeting "delayed" the bargaining session by at most about 30 minutes. Thus, the more credible evidence on this matter shows that Respondent did not unreasonably delay the bargaining meeting. Accordingly, Paragraph 15(b)(1) of the Consolidated Complaint is meritless and should be dismissed.

2. RESPONDENT DID NOT OFFER REGRESSIVE OR UNREASONABLE PROPOSALS

There is no merit to the allegation that Respondent offered regressive or unreasonable proposals. In fact, the allegedly regressive proposal involved the initial vacation accrual language contained in the Company's first economic proposal. Respondent's proposal contained language effectively incorporating the new vacation benefit implemented on January 1, 2016 into the collective bargaining agreement.

In doing so, Respondent incorporated the new vacation accrual schedule into the existing language of Article 12, rather than set forth the accrual schedule in the "chart form" as it appeared in the Memorandum to the employees. As a result, Mr. Raynor erroneously believed the company had pulled back the vacation accrual schedule implemented on January 1, 2016. But that was not the case. Although the "form" of the proposal looked different, the actual vacation accrual schedule was the same as the schedule implemented on January 1, 2016. Eventually, Mr. Raynor suggested the vacation benefit in the CBA might be easier to understand if the accrual schedule in Article XII contained the same accrual chart contained in the employee memo. Respondent agreed, and revised its economic proposal to incorporate the accrual chart.

In light of the foregoing, there is no merit to the allegation that Respondent engaged in regressive bargaining. Accordingly, Paragraph 15(b)(2) of the Consolidated Complaint is meritless and should be dismissed.

H. GENERAL COUNSEL CANNOT PROVE THAT RESPONDENT ENGAGED IN UNLAWFUL DIRECT DEALING

Paragraph 18 of the Consolidated Complaint alleges that AMP engaged in unlawful direct dealing in violation of Section 8(a)(5) of the Act by soliciting the withdrawal of an employee grievance. More specially, the General Counsel contends that AMP bypassed the Union and

solicited Melvin Boddie to withdraw the grievance challenging the Company's decision to move him from first to second shift. However, there is no evidence whatsoever that AMP solicited Mr. Boddie to withdraw of any grievance or otherwise engaged in direct dealing. Accordingly, the allegation in Complaint Paragraph 18 is totally without merit and should be dismissed.

1. DIRECT DEALING

Section 8(a)(5) prohibits an employer from engaging in unlawful "direct dealing" – i.e., "bypassing" the employees' bargaining representative and communicating directly with union represented employees. *General Electric, Co.,* 150 NLRB 191 (1964), *enf*. 418 F.2d 736 (2nd Cir. 1969). Essentially, unlawful direct dealing consists of:

(1) Non-coercive communications issued directly to represented employees;

(2) which are intended to, or have the effect of, bypassing and/or undermining the status of the union as the employees' exclusive bargaining representative.

Id. The fundamental inquiry in a direct dealing case is whether the employer has chosen to "deal with the union through employees, rather than with the employees through the union." *Id*. at 759.*Permanente Medical Group, Inc.*, 332 NLRB 1143, 1144 (2000) citing *Southern California Gas Co.*, 316 NLRB 979 (1995). In that regard, the purpose of the communication at issue must be to undercut the union's role as bargaining representative. *See Emhart Industries*, 297 NLRB 215 (1987) (no unlawful direct dealing even though employer conducted several mandatory employee meetings without notice to the union regarding subjects of ongoing negotiations where the employer did not promise any benefits to the exclusion of the union and there was no intent by the employer to undermine the union).

2. AMP DID NOT SOLICIT MELVIN BODDIE TO WITHDRAW THE UNION GRIEVANCE FILED ON HIS BEHALF

In this case, there is no evidence that Respondent bypassed the union or otherwise engaged in "direct dealing" with Melvin Boddie in order to persuade him "withdraw the grievance." Consequently, the direct dealing allegation necessarily fails.

At the outset, it is important to note that the grievance at issue was not filed by Melvin Boddie. Rather, according to Sheila Dogan, the grievance was filed by the union on behalf of Mr. Boddie and other employees (Tr. 340 Dogan). Accordingly, Melvin Boddie could not "withdraw the grievance" as alleged. In that regard, the record evidence shows that the Union – not Mr. Boddie – withdrew the shift change grievance (See GC-___). Thus, even if Mr. Boddie no longer wanted to challenge the decision to move him from first to second shift, nothing prevented the Union from continuing to pursue the grievance even without Mr. Boddie's participation.

Moreover, at no time did Brian Forehand or any other AMP manager or supervisor solicit Mr. Boddie not to pursue the grievance or not participate in the grievance meeting.[54] Rather, Mr. Boddie made that decision because – as of the date of the grievance meeting on January 20, 2016, Mr. Boddie had already returned to first shift.

In light of the foregoing, Respondent contends there is no merit whatsoever to the allegations that Respondent engaged in direct dealing. Paragraph 18 of the Complaint therefore, should be dismissed.

[54] Ironically, it was only because of the Company's effort to have Mr. Boddie attend the grievance meeting that he learned there was such a meeting scheduled that day.

III. ALLEGED UNFAIR LABOR PRACTICES INVOLVING PATRICIA PORTER ARE MERITLESS AND SHOULD BE DISMISSED

The Complaint also contains to two Paragraphs alleged that Respondent engaged in unfair labor practices with regard to employee Patricia Porter:

In that regard, Complaint Paragraph 9 alleges that on January 27, 2016 General Manager "discouraged union activity by soliciting employees to cease engaging in union activities" Apparently this allegation is based on the false assertion that Mr. Morehead told Patricia Porter that she did not have to attend a grievance meeting on January 27, 2016. In that regard, Respondent denies that Mr. Morehead ever made that statement to Mr. Porter. Moreover, even if had, such a statement would not constitute interference with union activities nor violate the NLRA. Accordingly, Complaint Paragraph 9 is meritless and should be dismissed.

In addition, Complaint Paragraph 19 essentially alleges that Respondent violated the Act by failing to bargain about establishing a new "policy" requiring that Union officers clock out to attend grievance meetings. Once again, there is simply no factual basis nor any substantive merit to the allegations n Complaint Paragraph 19.

First, Respondent disputes the claim that Kenny Morehead or any other manager or supervisor ever told Ms. Porter she had to clock out to attend the grievance meeting on January 27, 2015. In that regard, aside from Ms. Porter's self-serving testimony there is no evidence she was ever instructed to clock out. Moreover, Ms. Porter was not a credible witness, and her testimony is completely unreliable

Second, Respondent did not have a "policy" regarding checking out for grievances. Prior to the withdrawal of recognition, all grievance meetings were held at the plant so there the issue of clocking out never came up. Thus, Respondent could not have unilaterally changed a policy that did not exist.

Third, because this situation arose after Respondent withdrew recognition, it was under no obligation to bargain.

IV. AMERIPRIDE LAWFULLY CHANGED TERMS AND CONDITIONS OF EMPLOYMENT AT THE MEMPHIS BRANCH AFTER IT LAWFULLY WITHDREW RECOGNITION FROM THE UNION

Paragraph 17 of the Consolidated Complaint alleges that on or after January 19, 2016, Respondent unilaterally implemented changes to wages, hours, and other terms and conditions in violation of Sections 8(a)(1) and (5) of the Act.

Although Respondent admits that it made certain changes to employee wages, hours, and other terms and conditions of employment as alleged in Paragraph 17 of the Consolidated Complaint. To the extent these changes occurred after Respondent had lawfully withdrew recognition from the Union, there is no merit the allegations. After Respondent lawfully withdrew recognition from the Union effective January 16, 2016, Respondent was under no obligation to bargain with the Union about such changes.

Accordingly, the allegations in Paragraph 17 of the Complaint are meritless and should be dismissed.

CONCLUSION

Based on the foregoing facts, authorities, and arguments, Respondent AmeriPride Services respectfully contends there is no merit whatsoever to allegations contained in the Consolidated Complaint. On January 15, 2016, Respondent lawfully withdrew recognition from the Union based on objective evidence the Union lost majority status. Respondent premised its objective evidence on a petition signed by a majority of bargaining employees expressly demanding that Responded withdraw recognition. Contrary to the Complaint allegations, there is no credible evidence nor any

basis whatsoever to find that Respondent engaged in unfair labor practices that undermined the petition. Moreover, because Respondent lawfully withdrew recognition from the Union effective January 16, 2016, any change in terms and conditions of employment implemented after that date were lawful.

Respectfully Submitted,

/s/ John F. Bowen

JOHN F. BOWEN

JOHN F. BOWEN LTD
LABOR LAW CONSULTING & LEGAL SERVICES

8400 NORMANDALE LAKE BLVD, SUITE 920
MINNEAPOLIS, MINNESOTA 55437
TEL: 952.921.8442
E-MAIL: jfbowen@johnfbowen.com

November 13, 2017